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THE
Practical Regiſter:
OR, A General
ABRIDGMENT
OF THE
LAW,

Relating to the PRACTICE of the ſeveral Courts of
Chancery, King's Bench, Common Pleas, and Exchequer:
Digeſted by way of Common-Place, under Alphabetical Heads;
with great Variety of CASES extracted from the Reports and Statutes;
Together with
All the RULES of the ſaid COURTS.

By *JOHN LILLY*, Gent. late
Principal of *Clifford's Inn.*

In TWO VOLUMES.
The Second Edition.

To which is added,
A SUPPLEMENT,
Continuing the RULES of the ſaid reſpective Courts down to *Michaelmas* Term 1744. and containing all ſuch Acts of Parliament, and adjudged Caſes, made and reported ſince the firſt Publication of this Edition, as any ways relate to the Practice of the ſaid Courts.

With TWO TABLES:
One of the ſeveral Acts of Parliament mention'd and explain'd throughout this whole Work; the Other, of the Names of the ſeveral Heads contained in each Volume.

VOL. II.

In the SAVOY:
Printed by HENRY LINTOT, (Aſſignee of *Edward Sayer*, Eſq;) and Sold by
J. Shuckburgh, at the *Sun* in *Fleetſtreet*. M.DCC.XLV.

Habeas Corpus.

See { Bail.
Declarations.
Priſoner.

A Habeas Corpus is a Writ which lies to bring the Body of the Perſon into Court who is committed to any Gaol, either in Criminal or Civil Cauſes.

Habeas Corpus, what it is.

B No *Habeas Corpus* ſhall be made out in the Vacation-time, to remove a Cauſe out of an inferior Court, other than the Courts in *London*, *Middleſex*, or the *Marſhalſea*, or other Courts within ten Miles of *London*, retornable *immediate*, but at a Day certain in Court; and that every ſuch *Habeas Corpus*, retornable in *Trin.* or *Hill.* Term, be not retornable after the ſecond Retorn of the Term. *Per Magiſtr. Liveſay, & alios, Paſch.* 21 *Car.* 2.

No *Habeas Corpus* to be made out in Vacation-time retornable *immediate*, but at a Day certain in Court: And in *Hill.* and *Trin.* after the ſecond Retorn of the Term.

C If a Priſoner appear in Court upon a Retorn of a *Habeas Corpus* to remove him hither, and there doth appear by the Retorn, that there was good Cauſe to commit the Priſoner to Priſon, and to detain him there, the Court will remand and ſend him back to the Place wherein he was firſt committed; or bail, or commit him to the Queen's Bench if they think fit: But if upon the Retorn it doth appear, that there was no lawful Cauſe to commit him, then the Court will diſcharge the Priſoner; but if it be doubtful to the Court, whether he was lawfully committed or not, then the Court will bail the Priſoner, if he can find good Bail, or commit him until the Matter do appear whether there was Cauſe or not. *Hill.* 21 *Car. B. R. Trin.* 23 *Car. B. R.*

What the Court will do, if upon a Priſoner's Appearance they find by the Retorn of the *Habeas Corpus* that there was good Cauſe to commit him; and what if not.

D If a Cauſe be removed in the Vacation out of *London*, *Middleſex*, or the *Marſhalſea*, or other Courts within five Miles of *London*, by *Habeas Corpus*, retornable *immediate*, and Bail put in by the firſt Retorn of the next Term, if the Declaration be deli-

How the Defendant muſt plead, if a Cauſe be removed in Vacation-time by *Habeas Corpus*, retornable *immediate*.

vered eight Days before the End of the Term, then the Defendant is to plead to enter: And in *Mich.* Term, if it be deliver'd before the Retorn-day of *Craſtin. Anim.* And in *Eaſter* Term before the Retorn-day of *Menſ. Paſch.* then the Defendant is to plead to Trial the ſame Term. *Per Magiſt. Liveſay & alios, Paſch.* 21 *Car.* 2. *Regis.*

A *Habeas Corpus cum cauſa* removes the Body of the Party and all Cauſes depending againſt him.

A **A** *Habeas Corpus cum cauſa* doth remove the Body of the Party for whom it is granted, and all the Cauſes which are then depending againſt him. 21 *Car. B. R.* And for that Reaſon it is called a *Habeas Corpus cum cauſa*, the Body with the Cauſe, which is *nomen collectivum*, and implies all Cauſes. And if upon the Retorn of a *Habeas Corpus*, the Officer doth not retorn all the Cauſes, or returns them falſly, it is an Eſcape in him: Alſo the Sheriffs of *London* and *Middleſex*, where the Writ is retornable *immediate*, ought to make their Retorn the ſame Day that the Writ is deliver'd, and muſt bring the Body immediately, as the Writ requires, and not ſuffer the Priſoner to wander abroad upon Pretence thereof; ſo likewiſe where a *Habeas Corpus* is directed to the Warden of the Fleet; but a *Habeas Corpus* to all Priſons except *London* and *Middleſex*, commanding the Sheriffs to bring the Priſoners, muſt be retornable at a Day certain in Court.

If the Officer retorn not all the Cauſes, it is an Eſcape.

Sheriffs of *London* and *Middleſex* muſt make the Retorn the ſame Day, if the *Habeas Corpus* be retornable *immediate*, ſo likewiſe the Warden of the Fleet: But a *Habeas Corpus* to all other Priſons muſt be retornable at a Day certain in Court.

Habeas Corpus either *ad ſubjiciendum*, or *ad reſpondendum*.

B **A** *Habeas Corpus* is either *ad ſubjiciendum*, granted on the Crown-Side, or *ad reſpondendum*, granted on the Plea-Side. *Ad ſubjiciendum*, to ſubmit to the Order of the Court in Criminal Matters, *ad reſpondendum*, as abovesaid.

What the Plaintiff's Attorney muſt do when a *Habeas Corpus ad ſatisfaciendum* iſſues out of *B. R.*

C **Where** a Writ of *Habeas Corpus ad ſatisfaciendum* iſſues out of this Court, the Attorney for the Plaintiff muſt endorſe the Number-Roll of the Judgment on the back of the *Habeas Corpus*: And in the Caſe of one *Sadler, Mich.* 21 *Car.* 2. the Court granted a *Pluries Habeas Corpus*, with Penalty of 100 *l.* retornable *immediate*.

Retorn of a *Habeas Corpus* not amendable after it is read and filed in Court.

D **After** the Retorn of a *Habeas Corpus* is read and filed in Court, it cannot be amended. *Trin.* 23 *Car. B. R.* For it is then a Record of the Court; but before it be filed, it may.

It ought not to be taken out for a Priſoner without his Conſent.

E **None** ought to take out a *Habeas Corpus* for a Priſoner without his Conſent. *Trin.* 23 *Car. B. R.* unleſs it be to turn him over to the King's Bench, or charge him with an Action in Court.

It may be granted by a Judge at his Chamber.

F **A** *Habeas Corpus* may be granted by this Court, or by a ſingle Judge at his Chamber, to any private Perſon, who keeps another in his Houſe, or elſewhere, in Cuſtody againſt his Will, by Virtue of the *Habeas Corpus* Act.

A **Where** a *Habeas Corpus* is grantable without Motion to remove upon Arreſt, but not where committed for a Crime. 1 *Lev. fol.* 1.

Where grantable without Motion, where no.

B **A** *Habeas Corpus* was denied for a Priſoner to have him for a Witneſs at *Worceſter* Aſſizes, by the Court. *Trin.* 1657.

Denied to bring a Priſoner to be a Witneſs at the Aſſizes.

C **Every** *Habeas Corpus* retornable at a Day certain, to remove a Cauſe out of an inferior Court, muſt not be made retornable further than the ſecond Retorn in *Hillary* and *Trinity* Terms; ſo that the Defendants may plead to iſſue that Term, and the Cauſe may be tried at the Aſſizes, and in Default of Pleading to Trial, the Plaintiff may take his Judgment.

If returnable at a Day certain, it muſt not be after the ſecond Retorn in *Hill.* and *Trin.* Terms.

D **A** Judge of this Court will not grant a *Habeas Corpus* in the Vacation, for a Priſoner to follow his Suits; but the Court may grant a Special *Habeas Corpus* for a Priſoner to be at his Trial in the Vacation Time. *Paſch.* 1650. 24 *Maii, B. S.* For this may concern him more than the other can.

Not grantable by a Judge in Vacation for a Priſoner to follow his Suits.

E **The** Court will grant a *Habeas Corpus* to one, to have a Priſoner who is not in Execution, out of Priſon, to be a Witneſs for him at a Trial; but at the Charge of him that deſires the *Habeas Corpus*, and at his Peril, to take Care that the Priſoner do not make an Eſcape. 29 *Junii*, 1640. *Trin. B. S.*

The Court will grant a *Habeas Corpus* for a Priſoner not in Execution to be Witneſs at a Trial; but at the Peril of him that deſires it.

F **By** *Newdigate* Juſtice, *Trin.* 1659. If a *Habeas Corpus* be granted, to give Liberty to a Priſoner that lies in Priſon upon an Execution longer than for one Day; this is not according to Law.

May not be granted for a Priſoner in Execution longer than for one Day.

G **The** Court uſeth not to put the Reaſon into a *Habeas Corpus*, why they ſend for the Priſoner; for it may be for Treaſon, or great Conſpiracy. By *Catline*, Juſtice.

Reaſon why the Priſoner is ſent for, not expreſs'd in the *Habeas Corpus*.

H **The** *Habeas Corpus* was return'd *Nullum habeo talem in Cuſtodia mea, nec habui die impetrationis*: And adjudg'd inſufficient. 2 *Leon.* 128.

What is an inſufficient Retorn.

I **Upon** a *Habeas Corpus* granted by this Court, upon reading of the Retorn, the Court took this Difference: Where the Priſoner was committed by one of the Privy Council, there the Cauſe of his Commitment muſt be retorned particularly; but where he is committed by the whole Council, there need no Cauſe to be alledg'd. *Howel*'s Caſe, 1 *Leon.* 70 and 71.

If the Priſoner be committed by one of the Privy Council, the Retorn muſt expreſs the Cauſe; otherwiſe if by the whole Council.

K **Where** a Priſoner is brought up by *Habeas Corpus* upon a bailable Action, the Bail is not to be taken abſolutely without the Conſent of the Plaintiff's Attorney; for without ſuch Conſent a Judge will take it but *de bene eſſe*; but the Priſoner cannot be diſcharged till it is taken abſolutely.

Tho' the Priſoner be bailable, yet Bail may not be taken without Conſent of Plaintiff's Attorney.

No *Habeas Corpus* ſhall be allowed to remove a Cauſe, unleſs deliver'd to the Judge before one of the Jury be ſworn. 43 **Eliz. cap.** 5.

No Writ of *Habeas Corpus*, or other Writ, to remove a Cauſe out of an inferior Court, ſhall be allowed, except the ſame be deliver'd to the Judge of the Court before the Jury, who are to try the Cauſe, have appeared, and one of the Jury be ſworn to try the ſaid Cauſe. A

Habeas Corpus ad reſpondendum, what.

An *Habeas Corpus ad reſpondendum* is when any one is impriſoned at the Suit of another, upon a legal Proceſs, in the *Fleet*, or any other Priſon, except the *King's Bench* Priſon; and a third Perſon would ſue that Priſoner in the Court of *King's Bench*, and cannot, becauſe he is not in Cuſtody of the Marſhal of this Court: There he may have an *Habeas Corpus* to remove the Priſoner out of the Priſon where he is, into this Court, returnable at a Day certain, to anſwer unto this Action here; and for that Cauſe it is called *Habeas Corpus ad reſpondendum*, becauſe he is to anſwer the Party's Action. Alſo, where a Perſon is in Cuſtody in an inferior Juriſdiction, the Plaintiff may bring his *Habeas Corpus ad reſpondendum* returnable in this Court; and then the Defendant cannot nonſuit the Plaintiff, nor be bailed, but only by the Court of *King's Bench*, or be committed to the Cuſtody of the Marſhal. B

The *Habeas Corpus* Act, 31 **Car. 2. cap.** 2.

By the *Habeas Corpus Act*, made 13 *Car*. 1. *c*. 2. it is enacted, That when any Perſon ſhall bring an *Habeas Corpus* to any Sheriff, Gaoler, Miniſter, or any other Perſon, for any Perſon in his or their Cuſtody, and the Writ ſhall be ſerved upon the ſaid Officer, or left at the Gaol or Priſon with any Under-Officer, Under-Keeper, or Deputy of the ſaid Officer or Keeper; that the ſaid Officer, or his or their Under-Officers, Under-Keepers or Deputies, ſhall within three Days after ſuch Service (unleſs the Commitment were for Treaſon and Felony plainly and ſpecially expreſs'd, upon Payment or Tender of the Charges of bringing the ſaid Priſoner to be aſcertain'd by the Judge of the Court that awarded the ſame, and endorſed upon the ſaid Writ, not exceeding 12*d. per* Mile; and upon Security given of his own Bond, to pay the Charges of carrying back the Priſoner, if he ſhall be remanded back by the Court or Judge, and that he will not make any Eſcape by the Way) make Return of ſuch Writ, and bring, or cauſe to be brought, the Body of the Party ſo committed or reſtrained, unto or before the Lord Chancellor or Lord Keeper, or the Judges or Barons of the ſaid Court from whence the ſaid Writ ſhall iſſue, or unto and before ſuch other Perſon or Perſons before whom the ſaid Writ is returnable: And ſhall then certify the true Cauſes of his Detainer or Impriſonment, unleſs the Commitment be in any Place beyond the Diſtance of twenty Miles from the Place where ſuch Court or Perſon is reſiding, and not above one hundred Miles, then within the Space of twenty Days after ſuch Delivery, and not longer. C

The Statute goes on. 31 **Car.** 2.

That ſuch Writ ſhall be marked, *per Statutum* 31 *Car*. 2. and ſigned by the Perſon that awards the ſame: And if any Perſon ſhall be committed or detained for any Crime but Treaſon or Felony, plainly expreſs'd in the Commitment-Warrant in Vacation Time, and out of Term, it ſhall be lawful for ſuch Perſon D (other than Perſons convict, or in Execution by legal Proceſs) or any one in his Behalf, to complain to the Lord Chancellor, Lord Keeper, or any one of his Majeſty's Juſtices, or Barons of the Exchequer of the Degree of the Coif, who, or any of them, upon View of the Copy or Copies of the Warrant or Warrants of Commitment, or otherwiſe, upon Oath made that ſuch Copy or Copies were denied to be given, are hereby authorized and required, upon Requeſt made in Writing by ſuch Perſon, or any on his Behalf, atteſted and ſubſcribed by two Witneſſes who were preſent at the Delivery of the ſame, to award and grant an *Habeas Corpus* under the Seal of the Court whereof he ſhall then be one of the Judges, to be directed to the Officer in whoſe Cuſtody the Party ſhall be, returnable immediately before the Chancellor, Keeper, or ſuch Juſtice, Baron, or any other Juſtice or Baron of the Degree of the Coif, or any of them; and upon Service thereof as aforeſaid, the Officer, or his Under-Officer or Deputy, ſhall within the ſaid Times bring ſuch Priſoner before ſuch Perſon before whom ſuch Writ is returnable, and in Caſe of his Abſence, before any other of them, with the Retorn of the ſaid Writ, and the true Cauſes of the Commitment and Detainer, and within two Days after the Party ſhall be brought before them, ſhall diſcharge ſuch Priſoner, taking his or their Recognizance, with one or more Sureties, in any Sum, according to their Diſcretions (having Regard to the Priſoner, and the Quality of the Offence) for his Appearance at the King's Bench the Term following, or at the next Aſſizes or Seſſions, or general Gaol-Delivery, of and for ſuch County, City or Place, where the Commitment was, or Offence committed or cogniſable; and ſhall certify the Writ, Return and Recogniſance, to the Court where ſuch Appearance is to be made; unleſs it ſhall appear, that the Party ſo committed is detain'd upon a legal Proceſs, Order or Warrant, out of ſome Court that hath Juriſdiction of Criminal Matters; or by ſome Warrant ſigned and ſealed by any of the ſaid Juſtices or Barons, or ſome Juſtice of the Peace, for ſuch Matters or Offences, for which by Law the Priſoner is not bailable.

A Provided that no Perſon ſhall have this Writ, who hath wilfully neglected two whole Terms to pray it.

Not to have it after two Terms.

B And further, That the Officer, or his Under-Keeper or Deputy, who ſhall neglect or refuſe to make ſuch Retorn, and bring the Body, or within the Space of ſix Hours after Demand, ſhall not deliver to the Perſon demanding a true Copy of the Commitment-Warrant, the head Gaoler, and ſuch other Perſon, in whoſe Cuſtody ſuch Priſoner ſhall be, ſhall forfeit to the Priſoner, or the Party grieved, for the firſt Offence 100*l.* and for the ſecond Offence 200*l.* and is hereby made uncapable to hold or execute his Office; the Penalties to be recovered by the Priſoner or Party grieved, his Executors or Adminiſtrators, by Action of Debt, *&c.* And any Recovery ſhall be a Conviction for the firſt Offence, and any After-Recovery for the ſecond Offence.

C That no Perſon which ſhall be deliver'd upon his *Habeas Corpus*, ſhall be committed again for the ſame Offence, other than by legal Order and Proceſs of

No Perſon deliver'd upon his *Habeas Corpus*, ſhall be committed again for the ſame Offence.

ſuch Court where they ſhall be bound by Recognizance to appear, or other Court having Juriſdiction of the Cauſe, upon Pain to forfeit 500 *l.*

The Act goes on further.

Provided, That if any Perſon ſhall be committed for High Treaſon or Felony, plainly and ſpecially expreſs'd in the Commitment-Warrant, upon his Prayer or Petition in open Court the firſt Week of the Term, or firſt Day of the Seſſions of *Oyer* and *Terminer*, or general Gaol-Delivery, to be brought to his Trial, ſhall not be indicted ſome Time the next Term, Seſſions of *Oyer* and *Terminer*, or general Gaol-Delivery, after ſuch Commitment: It ſhall be lawful for the Judges of the King's Bench, Juſtices of *Oyer* and *Terminer*, and general Gaol-Delivery, and they are required upon Motion to them made in open Court the laſt Day of the Term, or ſuch Seſſions, either by the Priſoner, or any one on his Behalf, to ſet at Liberty the Priſoner upon Bail, unleſs it appear to the Judges and Juſtices upon Oath, That the Witneſſes for the King could not be produced the ſame Term or Seſſions. And in Caſe he ſhall not be indicted or tried the ſecond Term or Seſſions, or upon his Trial ſhall be acquitted, he ſhall be diſcharged from his Impriſonment. A

Not to diſcharge any Perſon charged with Debt.

Provided, That this Act ſhall not extend to diſcharge out of Priſon any Perſon charged with Debt, or other Action. B

Any Perſon in Cuſtody for a Criminal Matter, ſhall not be removed but by *Habeas Corpus.*

Provided, That if any Perſon be in Priſon or Officer's Cuſtody for any Criminal Matter, ſuch Perſon ſhall not be removed into the Cuſtody of any other Officer but by *Habeas Corpus*, upon Pain of incurring the aforeſaid Penalties for the firſt and ſecond Offence. C

The Forfeiture for denying of the Writ.

Provided, That any Priſoner may move and obtain his *Habeas Corpus* out of any of the ſaid Courts in the Vacation-time, upon View of the Copy of the Commitment-Warrant, or Oath made that ſuch Copy was denied: Then if ſuch Judge ſhall deny ſuch Writ, they ſhall ſeverally forfeit to the Party grieved 500 *l.* to be recovered in Manner aforeſaid. D

To go to all Places whatſoever.

That this Writ ſhall go to all Counties-Palatine, Cinque-Ports, and Privilege-Places in *England*, *Wales*, and *Berwick upon Tweed.* E

No Perſon be ſent Priſoner to *Jerſey*, *Guernſey*, or any of the Garriſons.

That no Perſon be ſent Priſoner to *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or any of the Ports, Garriſons, Iſlands or Places beyond the Seas, within the King's Dominions: But if any Perſon ſhall be ſo ſent a Priſoner, he ſhall bring his Action of falſe Impriſonment againſt the Perſon by whom he ſhall be committed, detained, impriſoned, ſent Priſoner, or tranſported, and recover treble Coſts, and not leſs than 500 *l.* Damages, and be from thenceforth diſabled to bear any Office of Truſt or Profit; and ſhall incur the Penalties of the Statute of *Proviſion and Præmunire*, made 16 *R.* 2. *cap.* 5. and be incapable of any Pardon from the King for any Loſſes or Diſabilities. G

The Penalty.

16 **R. 2. cap. 5.**

A **Provided,** That this ſhall not extend to any Perſon who ſhall, by Contract in Writing, agree with any Merchant to be tranſported to any Parts beyond Sea, and receive Earneſt upon ſuch Agreement.

Not to extend to Servants under Contract.

B **Provided,** That if any Man convicted of Felony, ſhall in open Court pray to be tranſported, and the Court thinks fit, it ſhall be done.

How Tranſportation for Felony ſhall be.

C **Provided,** That if any Perſon hath committed any Capital Offence in *Scotland*, *Ireland*, or any of his Majeſty's foreign Plantations or Iſlands, he may be ſent thither to be tried.

Perſons may be ſent thither from *Scotland*, &c. for Capital Crimes.

D **That** no Perſon ſhall be ſued for any Offence within this Act, but within two Years after ſuch Offence committed.

When to be ſued for any Thing againſt this Act.

E **Proviſo,** That any Party ſued for any Thing done by Virtue of this Act, may plead the General Iſſue, and give the Special Matter in Evidence.

May plead the General Iſſue.

F **If** any Perſon be committed by any Judge or Juſtice of the Peace, and charged as Acceſſory before the Fact, to any Petty Treaſon or Felony, or Suſpicion thereof, or Suſpicion of Petty Treaſon or Felony, which ſhall be plainly and ſpecially expreſs'd, ſuch Perſon ſhall not be removed or bailed by Virtue of this Act.

Who ſhall be removed or bailed by this Act.

G **If** the Steward of an inferior Court proceeds after an *Habeas Corpus* allow'd, all their Proceedings are void, and the Court will award a *Superſedeas. Cro. Car.* 79. *pl.* 1.

Proceedings in an inferior Court are void after an *Habeas Corpus* allowed.

H **No** Writ to remove a Suit commenced in an inferior Court of Record ſhall be obeyed, unleſs delivered to the Steward of the Court before Iſſue or Demurrer joined, ſo as the ſaid Iſſue or Demurrer be not joined within ſix Weeks after the Arreſt or Appearance of the Defendant.

Where the Cauſe is to be removed out of an inferior Court. 21 **Jac.** 1. **cap.** 23.

I **A Suit** ſhall never be removed again after a *Procedendo* allowed.

No Removal again after a *Procedendo*.

K **A Suit** where the Demand doth not exceed 5 *l.* not where the Freehold, Inheritance, Title of Land, Leaſe or Rent, is concern'd, ſhall not be removed.

Where the Demand is under 5 *l.* or the Freehold, or Inheritance, or Title of Land, or Rent, is ſued, ſhall not be removed.

L **The** Steward ought to be an Utter Barriſter of one of the Inns of Court, of three Years ſtanding at the leaſt.

The Steward muſt be an Utter Barriſter of three Years ſtanding.

M **A Commitment** for Treaſon in aiding the Eſcape of *A.* committed for Treaſon, ought to ſpecify the Treaſon for which *A.* was committed. 3 *Salk.* 272. 347.

Habeas Corpus for one committed for Treaſon.

N **See** a *Habeas Corpus* for one in Cuſtody at the King's Suit, and turned over becauſe the Action was precedent to the King's Extent. 3 *Salk.* 353.

For one in Cuſtody at the King's Suit.

A **But** one committed for a Criminal Matter, was on the like *Habeas Corpus* remanded. 3 *Salk.* 354.

When to be brought up by *Hab. Corp.* and not by Rule.

B **One** committed to the Marſhal by a Warrant of the Chief Juſtice of *B. R.* ought to be brought up by *Habeas Corpus*, and not by Rule. *Ibid.* 349.

Bankrupt.

C **A Commitment** by Commiſſioners of Bankrupts 'till the Defendant conform to their Authority, is ill. *Ibid.* 348.

When Commiſſioners may commit.

D **And** ſo is their Commitment till he ſhall be diſcharged by due Courſe of Law; for the Statute ſays till he ſubmit to be examined by the Commiſſioners. *Ibid.* 351.

35 **Eliz. cap.** 2.

E **So** a Commitment on 35 *El. cap.* 2. till he ſhould be delivered by due Courſe of Law, is ill. *ibid.*

F **See** a Commitment for a Fine upon a Conviction of forcible Deteiner. 3 *Salk.* 353.

One committed by the Admiralty.

G **One** committed by the Admiralty in Execution, is not removeable into *B. R.* to anſwer an Action there. *Ibid.* 351.

A Man not to be brought to another Court.

H **And** one brought into *B. R.* ſhall not be brought into any other Court till he has anſwered there. *Ibid.* 350.

When the Party is put to his Writ of Error.

I **If** a Commitment in Execution by a Court of *Oyer* and *Terminer*, be wrong in Form only, the Defendant can't be diſcharged on a *Habeas Corpus*, but is put to his Writ of Error. *Ibid.* 348.

To whom the Party is to be committed.

L **Note,** all Commitments in Execution by Courts of *Oyer* and *Terminer* ought to be to the Sheriff or his Gaoler, and the Word *Committitur* to be therein. *Ibid.*

When the Warrant to be returned.

M **Where** the Commitment is by Warrant, the Officers muſt return the Warrant. 3 *Salk.* 349.

When not.

N *Aliter* of Commitments by a Court to a proper Officer in Execution. *Ibid.*

When *Habeas Corpus* ill.

O **A** *Habeas Corpus* was quaſh'd, becauſe directed to the Sheriff or Gaoler in the Disjunctive. *Ibid.* 350.

When an *Alias*.

P **An** *Alias Habeas Corpus* was granted upon inſufficient Return of the former. *Ibid.*

Palatine of *Cheſter*.

Q **A** *Habeas Corpus* lies not to the County Palatine of *Cheſter*. 3 *Salk.* 354.

When a *Procedendo* iſſues.

R **A** *Habeas Corpus* after an interlocutory Judgment, then the Defendant died, and a *Procedendo* was awarded. *Ibid.* 352.

Ibid.

S **A** *Procedendo* may be awarded after filing the Return of a *Habeas Corpus*. *Ibid.*

When the Record not removed.

T **For** the Record itſelf is never removed by *Habeas Corpus*, as it is by a *Certiorari*. *Ibid.*

A **Therefore** on a Removal by *Habeas Corpus*, the Plaintiff muſt begin *de novo*, and declare againſt the Defendant, as in *Cuſtod. Mar.* 3 *Salk.* 352.

When to declare *de novo*.

B **On** a Commitment by the Houſe of Commons, no Court can deliver on a *Habeas Corpus*, *per* 3 *contra*, Holt 503.

On a Parliamentary Commitment.

C **Exception** was taken to the Return of a *Habeas Corpus* upon a Commitment by the College of Phyſicians; the Defendant was diſcharged, the Offence being pardoned. *Skin.* 676.

By the College of Phyſicians.

D **See** of Bail on the *Habeas Corpus* Act. *Comberb.* 6. 343, 344, 421, *&c.*

Bail.

E **Where** a Special Authority is given to commit to Priſon, it ought to be purſued and declared in the Concluſion of the Commitment, elſe the Priſoner ſhall be enlarged on a *Habeas Corpus*. *Ibid.* 305, 306.

A ſpecial Authority to commit.

F **A Difference** between a *Habeas Corpus* and a *Certiorari*. *Ibid.* 2.

G **No** *Habeas Corpus* to bring up one in Examination to be a Witneſs, *&c.* *Ibid.* 17. *vide* 33, 209.

Witneſs.

H **Where** a *Habeas Corpus* denied. *Ibid.* 74, 209.

Hab. Corp. denied.

I **See** of an ill Return of a *Habeas Corpus*. *Ibid.* 127.

Ill return'd.

K **Where** a Priſoner was detain'd for Fees after a *Habeas Corpus*. *Ibid.* 109.

Priſoner kept for Fees.

L **See** concerning a *Hab. Corp. ad teſtificandum*. *Ibid.* 48.

M **A** *Habeas Corpus* muſt be returned. *Carthew* 69.

N **Where** an Action is founded on the Cuſtom of *London*, the Declaration muſt be returned on the *Habeas Corpus*. *Ibid.* 75.

How to be returned in *London*.

O **On** a *Habeas Corpus* by one who had been a Priſoner two Terms, and not tried, he muſt be diſcharged. *Mod. Caſes in Law and Equity*, 5.

When a Priſoner to be diſcharged.

P **Caſes** of Perſons brought into Court by *Habeas Corpus*. *Ibid.* 214.

Q **An** Attachment was granted againſt a Gaoler for denying to return a *Habeas Corpus*. *Ibid.* 226.

Return.

R **On** the Suſpenſion of the *Habeas Corpus* Act, the Power of *B. R.* is reſtrained by particular Words. *Ibid.* 98.

Habeas Corpus Act.

S **Where** a *Habeas Corpus* was granted for the Wife, being carried by her Huſband by Force into the *Mint*. *Ibid.* 22.

For the Wife.

T **Before** a Clauſe paſſed in a late Act of 12 *Geo.* I. to prevent frivolous and vexatious Arreſts, it was uſual where the Defendant was arreſted in an inferior Court in a Cauſe of Action, that they had Cognizance of, and could not be removed, for the Plaintiff's Attorney to enter a Plaint for a greater Sum, which by Law might be removed, and ſo bring a *Habeas Corpus*, which would remove that other Plaint of which the Court had Cognizance: To remedy which, it is by this Act enacted, That the Judges of ſuch inferior Courts as are deſcribed in the Statute of 21 *Jac.* I. *cap.* 23. ſhall proceed in ſuch Actions, Bills, Plaints, Suits or Cauſes as are therein ſpecified, which appear, or are laid not to exceed the Sum of 5 *l.* tho' there may be other Actions againſt ſuch Defendant, wherein the Plaintiff's Demands may exceed the ſaid Sum of 5 *l.* and this hath much alter'd the Authority of ſeveral Caſes in ſeveral Paragraphs under this Title.

Habendum.

Habendum, See { Day, and Day of the Date.
Livery.
Premiſſes.

The Office of the *Habendum.*

A The Office of the Habendum is to limit the Eſtate, ſo that the general Implication of the Eſtate, which by Conſtruction of Law paſſes in the Premiſſes, is by the Habendum controlled and qualified. 2 Rep. 55. a. b.

The *Habendum* will not carry the Eſtate where there is not a Grantee in the Premiſſes.

B A Bargain and Sale by Indenture without expreſſing to whom, altho' it were *Habendum* to *A. B.* who is a Party to the Deed, is not good, becauſe the Office of the *Habendum* is only to limit an Eſtate, and not to give any Thing; and there ought to be Grantor and Grantee in the Premiſſes of the Deed, otherwiſe it is void. *Cro. Eliz.* 903. 585.

Where void.

C An *Habendum*, contrary or repugnant to the Premiſſes, is void; and the Premiſſes ſhall ſtand. As to a Man and his Heirs, *Habendum* for Life, the *Habendum* is void and repugnant. 2 *Rep.* 23. *b.*

May enlarge the Premiſſes.

D An *Habendum* may enlarge the Premiſſes. 1 *Jones* 4. 8 *Rep.* 154.

Where it may abridge the Premiſſes.

E An *Habendum* may abridge the Premiſſes. *Hob.* 171. *Jones ibid.*

Where it may explain them.

F An *Habendum* may explain the Premiſſes. *Jones ibid.* *Dyer* 160.

A **An** *Habendum* may make void the Premiſſes. *Jones ibid.* 2 *Rep.* 23, 24, and 55.

Where it makes void the Premiſſes.

B **An** Eſtate of Freehold cannot commence *in futuro.* 2 *Rep.* 55. See Title **Leaſes.**

An Eſtate of Freehold cannot commence *in futuro.*

C **A Feoffment** in Fee is made, *Habendum* after the Death of the Feoffor, and Livery thereupon; this is void, becauſe to commence *in futuro. Cro. Eliz.* 254. 27. *pl.* 255. See Title **Livery.**

A Feoffment with Livery, *Habendum* after the Death of the Feoffor, is void.

D **Where** a Thing is limited before the *Habendum*, and afterwards ſays *Habendum* for Years, Life, or in Fee, and doth not name the Thing in the *Habendum*; this ſhall be referred to the Thing ſpoken before the *Habendum*, and not repeat the Thing again in the *Habendum*: For the Office of the Premiſſes is to expreſs the Certainty of the Thing given; and of the *Habendum*, to expreſs the Quantity of the Eſtate. 1 *Plow.* 196. *b.*

The Expoſition of an *Habendum.*

What the Premiſſes are to expreſs, and what the *Habendum.*

E **The** *Habendum* ſhall never introduce one who is a Stranger to the Premiſſes. 3 *Leon. Caſe* 60.

The *Habendum* ſhall never bring in a ſtrange Perſon.

F **The** Office of the Premiſſes of a Deed is to limit the Perſons who ſhall have it, and the Office of the *Habendum* is to limit the Eſtate of the Thing which is granted. *Ibid. fol.* 34.

What is the Office of the Premiſſes, and what of the *Habendum.*

G **If** *J.* enfeoff *A.* and *B.* of two Acres, *Habendum* the one Acre to *A.* the other to *B.* the *Habendum* is void, becauſe contrary to the Premiſſes; for each of them is excluded out of one Acre, which was given him by the Premiſſes. 3 *Leon. Caſe* 178. *fol.* 126.

Habendum contrary to the Premiſſes is void.

H **A Leaſe** to one, *Habendum* to him and another, *ſicut nominantur in Charta*, made it certain enough; ſo *ſicut ſcribuntur & nominantur in Ordine* is good; but *Habendum* to three *ſucceſſive* is void for the Uncertainty. 4 *Leon. Caſe* 389.

A Leaſe to one, *Habendum* to him and another, is good; ſo *ſicut nominantur in Charta.*

I **Where** in Ejectment the Plaintiff declared upon two Demiſes, but one *Habendum* good. *Carthew.* 224.

Ejectment.

K *Habendum* from the Date, or from the making, is all one. *Comberb.* 399.

How good.

L *Habendum*, the ſaid 100*l.* to them, and their Aſſignees, *viz.* to each of them 20*l.* the *viz.* makes them Tenants in Common. *Ibid.* 330.

The Fee of the *Habendum.*

Habere facias poſſeſſionem.

What this Writ is.

THIS **is a Judicial Writ, and lies where one hath recovered Poſſeſſion in an** Ejectione Firmæ, **and is to put him into Poſſeſſion, and is directed to the Sheriff.** A

How the Sheriff may remove Goods upon an *Habere facias poſſeſſionem.*

How the Sheriff may juſtify the removing of the Goods out of Poſſeſſion, upon a Writ of *Habere facias poſſeſſionem. Lutw.* 1486. B

If a Writ of *Habere facias poſſeſſionem* be not well executed or return'd, one may have a new one.

One may have a new Writ of *Habere facias poſſeſſionem*, if a former Writ of *Habere facias poſſeſſionem* be not well executed or return'd. *Mich.* 22 *Car.* 1. *B. R.* becauſe it is all one as if ſuch Writ had never been taken out; for the Party had no Fruit or Benefit by it: So *de novo*, when ouſted, is the Defendant's Means. 1 *Keb.* 779. *pl.* 2. C

The Sheriff may raiſe the *Poſſe* to execute this Writ.

The Sheriff may raiſe the *Poſſe Comitatus*, in his Aſſiſtance, to execute an *Habere facias poſſeſſionem*, in Caſe of Oppoſition. *Vide Dalton* **Of Sheriffs.** D

No Fees due to the Sheriff upon it.

There are no Fees due to the Sheriff upon it. *Ibid.* E

Where a new Writ and an Attachment was order'd.

The Sheriff returned upon a Writ of Poſſeſſion that he removed a Woman and two Children out of the Houſe, which were all the Perſons he could find, and deliver'd peaceable Poſſeſſion to the Plaintiff, and afterwards departed; but three others which ſecretly lodged in the ſaid Houſe immediately expulſed the Plaintiff, and held it with Force upon his Retorn to the Houſe; and upon this Retorn made, the Court order'd a new Writ of Execution, and an Attachment againſt the Parties. 1 *Leon.* 145. *Caſe* 202. F

Heir.

See
- Contribution.
- Deviſe.
- Diſcent.
- Infant.
- Judgment.
- Tertenants.

A HÆres is he qui ex juſtis nuptiis procreatus eſt, to whom Land, Tenements, and Hereditaments, by the Act of God, and Right of Blood, do deſcend of ſome Eſtate of Inheritance. Co. Lit. 7. b.

Heir, who he is.

B The Word *Heir* is *Nomen collectivum*, and extends unto all Heirs. *Trin.* 23 *Jac. B. R.*

Heir is *Nomen collectivum.*

C The Heir is favour'd at the Common Law; for at the Common Law the Anceſtor could not convey away his Lands by his Will from his Heir at Law, upon his Death-bed, without the Conſent of the Heir: But now by the Statute of 32 *H.* 8. *Of Wills*, the Law is alter'd in that Point. *Hill.* 23 *Car. B. R.* The Law is the Preſerver of Inheritances.

The Common Law favours the Heir.

D It is a poſitive Rule in Law, that a Man cannot raiſe a Fee-ſimple to his own right Heirs, by the Name of Heirs, as a Purchaſe; neither by Conveyance of Land, nor by Uſe, nor by Deviſe; for if a Man deviſe Land to a Perſon that is his next Heir, and to his Heirs, the Deviſe is void, and the Heir ſhall be in by Diſcent: For *fortior & potentior eſt diſpoſitio legis quam hominis.* See *Hob.* 30.

A Man cannot raiſe a Fee-ſimple to his own right Heirs as a Purchaſer, neither by Conveyance, Uſe, nor Deviſe, for the Heir ſhall be in by Diſcent.

E Where the Father was ſeiſed in Fee, and his Son and Heir apparent made a Leaſe for Years, to commence after the Death of the Father, rendering Rent to his Son by his proper Name, the Son could not have this Rent. 2 *Saund.* 370.

Father ſeiſed in Fee; Son leaſes for Years, to commence after the Father's Death, rendering Rent; the Son cannot have it.

F Children ſhall inherit their Anceſtors, without Limitation, in the right aſcending Line, and are not inherited by them. *Hob.* 244.

Children inherit their Anceſtors in the right aſcending Line, but are not inherited by them.

Upon a *Sci. fa.* in a perſonal Action recovered againſt an Anceſtor, the Heir ſhall not have his Age; but he ſhall upon Error to reverſe a Fine.

A **The** Heir upon a *Sci. fa.* in a perſonal Action recover'd againſt his Anceſtor, ſhall not have his Age; but he ſhall have it upon a Writ of Error to reverſe a Fine or Recovery levied or ſuffer'd by his Anceſtor, becauſe this binds the Inheritance.

Reverſion in Fee upon a Tail is not Aſſets.

B **Reverſion** in Fee upon a Tail is not Aſſets. 3 *Lev.* 387.

In Debt againſt the Heir, that Executor had Aſſets, is no Plea.

C **In** Debt againſt the Heir, 'tis no Plea that the Executor had Aſſets. 3 *Lev.* 189.

Heir and Executor both chargeable upon Specialties.

D **Heirs and Executors** both chargeable upon Specialties, and 'tis no Plea for the one that another Action is depending againſt the other. *Dyer* 303.

Where the Heir ſhall take as Special Occupant.

E **Where** the Heir ſhall take as a Special Occupant, *Vide* 1 *Saund.* 261.

He that claims as Heir in Fee-ſimple, muſt make himſelf Heir to him who was laſt ſeiſed.

F **It** is a Maxim in Law, that a Man who claims as Heir in Fee-ſimple to any by Diſcent, muſt make himſelf Heir to him that was laſt ſeiſed of the actual Freehold and Inheritance. *Co. Litt.* 11. *b.*

Where an Heir born beyond Sea ſhall not inherit.

So likewiſe where a Subject ſtays longer beyond Sea than he was licenſed to ſtay.

G **A Subject** of the King goes beyond Sea, marries an *Engliſh* Woman, and continued there and practiſed traiterouſly, and had a Son born there: And held that he ſhall not inherit the Eſtate-tail: Alſo where a Subject goes beyond Sea with the King's Licence, and continueth longer than his appointed Time, he loſeth the Benefit of a Subject. 4 *Leon. Caſe* 29.

Shall not be diſinherited without apparent Intent.

H **An** Heir at Law ſhall not be diſinherited without an apparent Intent; becauſe, unleſs the Anceſtor makes a Diſpoſition of the Lands, they belong to the Heir by Law. *Lutw.* 764.

Shall be preferred in a doubtful Caſe.

I **The** Heir at Law is preferred in Chancery in a doubtful Caſe. *Chanc. Rep.* 7.

A Fine with Render by the Heir of the Part of the Mother, makes it deſcend to the Heirs of the Father.

K **One** ſeiſed of Lands as Heir to his Mother, levies a Fine with Warranty, *ſur* Grant and Render, to his own right Heirs: The Render is as a new Purchaſe, and makes the Eſtate diſcendible to the Heirs of the Part of the Father. *Show. Rep.* 93.

Two joint Heirs muſt be ſued jointly.

L **Where** a Man dies and leaves two joint Heirs, you cannot bring two ſeveral Actions of Debt againſt them ſeverally as Heirs, but muſt ſue them jointly, becauſe both of them make but one Heir. *Trin.* 1 *Jac.* 2. *B. R.*

Where he takes as a Purchaſer, he is not liable to be ſued upon his Father's Bond.

M **Where** Lands are deviſed to an Heir upon Condition that if he pay his Father's Debts within a Year, if not, to his Executors, the Heir hath it as Purchaſer, being tied with ſuch Condition; and ſo he may well plead *Riens per diſcent.* *Cro. Car.* 161. *pl.* 1.

A Where an Heir was ſued for an Annuity granted by his Anceſtor to the Plaintiff, and he pleads *Non eſt factum*; this is no ſuch falſe Plea as ſhall ſubject his own Eſtate: For it is not falſe in his own Cognizance, and the Lands of his Anceſtor ſhall only be taken in Execution. *Cro. Car.* 436. *pl.* 6.

Where an Heir pleads *Non eſt factum* of his Anceſtor, that is not a falſe Plea to ſubject his own Eſtate. Only his Anceſtor's Lands ſhall be taken in Execution.

B By the Law of *England*, no Man can take an Inheritance in Fee-ſimple by Deed without the Word *Heirs*, but by Deviſe he may. But where a Man takes an Eſtate by Virtue of the Statute *De Donis*, there he may have an Eſtate-tail by Conſtruction, which he could not have at the Common Law before. *Paſch.* 9 *W. B. R.*

By the Common Law no Man can take an Inheritance by Deed without the Word *Heirs*; but by the Statute *De Donis*, he may.

C If my Daughter die without Heir, (not Heir of her Body) then to remain, &c. This was adjudg'd an Eſtate-tail, and ſhall go to all the Heirs of her Body, tho' *Popham* was againſt it; and that ſhe having an Eſtate for Life, her Heir ſhall not take as a Purchaſer, but by Limitation. *Cro. El.* 313. *pl.* 5.

Where the Heirs by the Word *Heir* ſhall take by Diſcent, and where by Purchaſe.

D It is an antient Land-mark of the Law, that when the Anceſtor takes an Eſtate for Life, the Word *Heirs* is a Word of Limitation; but otherwiſe, (*viz.* if he doth not) it is a Word of Purchaſe. *Raym.* 334.

Where the Word *Heirs* is a Word of Limitation, and where of Purchaſe.

E Notice of a Deviſe muſt be given to the Heir, otherwiſe it is no Forfeiture; becauſe the Eſtate, *prima facie*, belongs to the Heir upon his Anceſtor's Death. *Lutw.* 813.

Notice of a Deviſe muſt be given to the Heir.

F If Timber-Trees be blown down, the Heir or Reverſioner ſhall have them; but if they be Dotards, they go to the Leſſee for Life or Years. 4 *Rep.* 63. *b.*

Timber-Trees blown down, go to the Heir; Dotards to the Leſſee.

G Fiſhes in a Pond ſhall go to the Heir, and not to the Executor. *Cro. El.* 372. *pl.* 18.

The Heir ſhall have the Fiſhes in the Ponds.

H The Heir ſhall enforce the Adminiſtrator to pay Debts with the perſonal Eſtate, to preſerve the Inheritance to the Heir. *Chanc. Rep.* 280, 297.

The Heir ſhall compel the Adminiſtrator to pay Debts with the perſonal Eſtate, to preſerve the Inheritance.

I Debt lies againſt the Heir of an Heir to the tenth Degree. *Noy* 56.

Debt lies againſt the Heir of an Heir.

K An Adminiſtrator brings Debt againſt an Heir, and ſays only, that he is Couſin and Heir, and doth not ſhew how particularly; yet held good. 3 *Annæ*, *B. R. Show. Rep.* 249. See *poſtea*, *hoc titulo*.

How an Heir is to be ſued.

L A Man brings an Action againſt Couſin and Heir, as Couſin and Heir, without ſaying how, and held good. *Show. Rep.* 249.

Debt againſt Couſin and Heir, how to be.

How to declare againſt an Heir.

A In an Action of Debt againſt an Heir, the Plaintiff muſt declare in the *debet & detinet*, and ſet forth particularly how the Defendant is Heir to the Obligor. But if in the *detinet* only, it is cured after a Verdict by the *Oxford* Act, *Car.* 2. *cap.* 1 *Lev.* 224.

Where a ſecond Son is charged after the Death of a firſt Son.

B When a ſecond Son is charged as Heir upon his Anceſtor's Bond, without taking Notice of the eldeſt Son, and of his Son, who are dead without Iſſue: If he hath Lands as Heir to his Father, then he is well charged; but if he hath them as Heir to his Nephew, *aliter*. *Show. Rep.* 284. 249.

Where a collateral Heir is to be charged, the Declaration ought to be Special.

C Debt upon Bond as Brother and Heir to *J. S.* the Defendant pleads *Riens per diſcent* from his Brother, whereas the Caſe was, The Obligor was ſeiſed in Fee, and had Iſſue, and died ſeiſed; the Iſſue afterwards died without Iſſue, and that deſcended to the Defendant as Heir to the Son of his Brother: And adjudg'd for the Defendant; for tho' he is chargeable as Heir upon this Bond, yet he is but collateral Heir, and it ought to be ſpecially declar'd. *Cro. Car.* 151. *pl.* 5.

How a Judgment ſhall be againſt an Heir. Where general, where ſpecial.

D Where a Man recovers againſt an Heir by Default or Verdict, upon pleading of *Riens per diſcent*, he may enter either a general, or elſe a ſpecial Judgment, *De terris deſcenſis*; and there he ſhall have all the Lands by Diſcent in Execution. But if the Judgment be general without ſuch Prayer, then he can have only a Moiety by *Elegit*. *Mich.* 1 *W. & M. B. R.* See *Plow. Com. Davys* and *Pepys* 439, 440, 441, 442. See alſo 2 *Leon. Caſe* 16. By the better Opinion a *Ca. ſa.* lies.

How it ſhall be upon a Judgment by *Nil dicit.*

E The Judgment and Execution ſhall be general, unleſs the Heir acknowledges the Action, and ſhews that he hath ſo much by Diſcent; but when he will not ſhew what he hath by Diſcent, and ſo loſes the Benefit the Law gives him, it ſhall be intended that he hath Aſſets by Diſcent to ſatisfy the Debt. *Cro. El.* 692. *pl.* 1. *Moor. Caſe* 688.

Executio quando Aſſets *acciderint.*

F In Debt againſt an Heir who pleads *Riens per diſcent*, the Plaintiff may have Judgment preſently, and a *Sci. fa.* when Aſſets diſcend. 8 *Rep.* 134. *a.*

Special Matter may be given in Evidence upon *Riens per diſcent.*

G Special Matter may be given in Evidence upon *Riens per diſcent*, as that the Sale was fradulent, *&c.* 5 *Rep.* 60.

Where the Heir is ſued as Tertenant, the Execution ſhall be but for a Moiety.

H In a *Sci. fa.* againſt the Heir and Tertenants he is charged only as Tertenant, and by pleading *Riens per diſcent*, and found againſt him, the Execution was of a Moiety, and not of all, as it ſhould have been upon a falſe Plea in Debt. *Cro. Car.* 294. See Title **Tertenant.**

A **A Man** ſhall never bind his Heir to warrant were he himſelf was never bound. *Cro. Jac.* 570. Neither will Debt lie againſt an Heir, unleſs he be particularly named. 1 *Saund.* 136.

A Man cannot bind his Heir to warrant, unleſs he be bound himſelf. Neither will Debt lie againſt him, if not particularly named.

B **Debt** againſt an Heir, who hath a Reverſion in Fee upon an Eſtate-tail; The Reverſion in Fee is Aſſets, upon a general *Riens per diſcent*; but the Heir may by a ſpecial Pleading help himſelf. 2 *Lev.* 286, 287.

How far a Reverſion in Fee upon an Eſtate-Tail is Aſſets.

C **If** any *Ceſtuy que Truſt* ſhall die, leaving a Truſt in Fee-ſimple to diſcend to his Heir; This Truſt ſhall be taken, and is declared to be Aſſets by Diſcent, and be liable to the Obligation of his Anceſtors, for or by Reaſon of Aſſets, as fully as he might or ought to have been, if the Eſtate had deſcended to him in Poſſeſſion, in like Manner as the Truſt deſcended. Stat. *Frauds and Perjuries.* 29 *Car.* 2. *cap.* 3.

An Eſtate deſcending to the Heir of *Ceſtuy que Truſt* ſhall be Aſſets.

Stat. 29 Car. 2. c. 3.

D **Provided,** That no Heir that ſhall be chargeable by Reaſon of any Eſtate or Truſt made Aſſets in his Hands by this Act, ſhall by Reaſon of any Plea, Confeſſion of the Action, or ſuffering of Judgment by *Nil dicit*, or any other Matter, be chargeable to pay the Condemnation out of his own Eſtate; but Execution ſhall be ſued of the whole Eſtate ſo made Aſſets in his Hands by Diſcent, in whoſe Hands ſoever it ſhall come after the Writ purchaſed, in the ſame Manner as it is to be at and by the Common Law, where the Heir at Law pleaded a true Plea. *Ibid.*

How the Truſt-Eſtate ſhall be chargeable upon a Judgment.

E **By** the Stat. 4 & 5 *W.* & *M. cap.* 20. for docketting of all Judgments, it is enacted, That no Judgment not docketted as that Act requires, (which ſee in Title **Judgments**) ſhall affect any Purchaſor or Mortgagee, or have any Preference againſt Heirs, Executors, or Adminiſtrators, in their Adminiſtration of their Anceſtors, Teſtators or Inteſtates Eſtates.

No Judgment, if not docketted, ſhall affect an Heir.

4 & 5 W. & M. c. 20.

F **This** was at firſt a temporary Act, but made perpetual by an Act made 7 & 8 *W. cap.* 36. See the Act in Title **Judgment.**

Made perpetual.

G **By** an Act made 3 & 4 *W.* & *M. cap.* 14. entituled, *An Act for Relief of Creditors againſt fraudulent Deviſes*, (which ſee in Title **Deviſe**) it is enacted, That where any Heir at Law ſhall be liable to pay the Debt of his Anceſtor, in regard of any Lands, &c. deſcending to him, and ſhall ſell, alien, or make over the ſame before any Action brought, or Proceſs ſued out againſt him, that ſuch Heir at Law ſhall be anſwerable for ſuch Debt or Debts, in an Action or Actions of Debt to the Value of the Land ſo by him ſold, aliened, or made over, in which Caſes all Creditors ſhall be preferred as in Actions againſt Executors

3 & 4 W. & M. cap. 14. For Relief of Creditors, againſt fraudulent Deviſes.

Where the Heir aliens before Action brought.

How Creditors ſhall be preferred.

What Lands ſhall be liable to Execution.

tors and Adminiſtrators, and ſuch Execution ſhall be taken out upon any Judgment ſo obtained againſt ſuch Heir, to the Value of the ſaid Lands, as if the ſame were his own proper Debt; ſaving that the Lands, Tenements, and Hereditaments, *bona fide* aliened before the Action brought, ſhall not be liable to ſuch Execution.

How the Heir may plead to Actions.

How the Plaintiff may reply.

What the Jury ſhall enquire of.

How Judgment againſt an Heir, without confeſſing of Aſſets.

A **And** it is further enacted, That where any Action of Debt upon any Specialty is brought againſt any Heir, he may plead *Riens per diſcent* at the Time of the Original Writ brought. And the Plaintiff in ſuch Action may reply, That he had Lands, Tenements, or Hereditaments, from his Anceſtors, before the Original Writ brought, or Bill filed; and if upon Iſſue joined thereupon it be found for the Plaintiff, the Jury ſhall enquire of the Value of the Lands, Tenements, or Hereditaments, ſo deſcended; and thereupon Judgment ſhall be given, and Execution ſhall be awarded as aforeſaid. But if Judgment ſhall be given againſt ſuch Heir by Confeſſion of the Action, without confeſſing the Aſſets deſcended, or upon Demurrer, or *Nihil dicit*, it ſhall be for the Debt and Damages, without any Inquiry for the Lands, Tenements, or Hereditaments deſcended.

Deviſees chargeable as the Heir.

B **Provided**, That all and every Deviſee, or Deviſees, made liable by this Act, ſhall be liable and chargeable in the ſame Manner as the Heir at Law, by Force of this Act; notwithſtanding the Lands, Tenements, and Hereditaments, to him deviſed, be aliened before the Action brought. See Title **Deviſe**.

6 & 7 W. 3. *cap.* 14.

C **Note**, This Act was temporary, but made perpetual by an Act made *6 & 7 W. cap.* 14.

A Caſe upon this Statute, with the Pleadings upon it.

D **See** a Caſe upon this Statute argued *Pro* and *Con*, how the Practice ſhall be upon it, 5 *Mod.* 122, 123. and alſo the Pleadings upon it, 119.

How Tertenants ought to plead.

E **Several** Tertenants are returned, who appear and plead jointly, that the Deceaſed was not ſeiſed, (the Day of the Judgment, or afterwards) of the Lands whereof they are returned Tertenants: And this upon a Demurrer was held to be ill; becauſe they ought to have pleaded this ſeverally, and not jointly. *Mich. 7 W. & M. B. R.*

The Heir ſhall have the Rent, tho' reſerved to the Executors and Aſſigns; and why.

F **Debt** upon a Leaſe for Years of Lands of Inheritance, rendring Rent to his Executors and Aſſigns; the Heir ſhall have the Rent, becauſe it being reſerved to him, his Executors and Aſſigns, the Rent ſhall continue after the Leſſor's Death, and ſhall go to the Heir upon the apparent Intent that it ſhall continue after the Leſſor's Death: And this without the Words *During the Term*. But otherwiſe it is, where it is reſerved to him and his Aſſigns. 2 *Lev.* 13, 14. 12 *Rep.* 36.

A **Where** the Heir ſhall have the Rent, and not the Executor, upon a Covenant to pay ſo much a Year to the Leſſor, his Heirs, Executors and Aſſigns, ſee *Cro. Car.* 307. *pl.* 1. See Title **Leaſes.**

Where the Heir and not the Executor ſhall have the Rent, payable by a Covenant.

B **Leſſee** covenants with the Leſſor, his Executors and Adminiſtrators, to repair; the Heir ſhall bring Covenant, tho' not named, becauſe this Covenant goes with the Land. 2 *Lev.* 92.

Where the Heir ſhall have Covenant, tho' not named.

C **A Man** covenants with the Grantee in Fee, that he, his Heirs and Aſſigns, ſhall quietly enjoy: Here was an Eviction in the Life of the Grantee; his Executors, and not his Heir, ſhall bring the Action. Becauſe, when the Covenant was broken, he could have neither Heir nor Aſſignee of theſe Lands: But the Damages ſhall be recover'd by the Executors, tho' they are not named in the Covenant, for that they repreſent the Perſon of the Teſtator. 2 *Lev.* 26. *a.*

Where Executor, not the Heir, ſhall bring the Action of Covenant.

D **An** Heir ſhall not find Bail upon a Cauſe remov'd out of an inferior Court; becauſe he is not liable to find Bail in any of the ſuperior Courts. 2 *Lev.* 204.

An Heir ſhall not put in Bail.

E **The** Executor hath Aſſets, and the Heir alſo hath Aſſets; it is at the Obligee's Election to have the Debt of the one or the other: But he ſhall not charge them doubly; but if he be ſatisfied by one, the other ſhall have his *Audita Querela.* 2 *Plow.* 439. *b.*

Obligee may ſue either the Heir or Executor.

F *A.* ſeiſed in Fee, makes an Eſtate-tail, Reverſion to himſelf in Fee. He enters into Bond, and dies, and after divers Diſcents from Heir to Heir in Tail, the Tail determines. The Heir of the Reverſion in Fee ought to be charged as Heir to *A.* not as Heir to any of the mean Heirs in Tail; becauſe they were never actually ſeiſed of the Fee. 3 *Lev.* 286.

G **The** Heir of a Perſon attainted of Treaſon, may with the King's Licence bring his Writ of Error to reverſe the Attainder of his Anceſtor, tho' properly ſpeaking, a Perſon attainted can have no Heir; but, as to this Purpoſe, he ſhall be Heir to bring a Writ of Error, otherwiſe he ſhould be without Remedy. 6 *W. & M. B. R.*

The Heir of a Perſon attainted, may bring Error.

H **A Feoffment** to the Uſe of *J. S.* and the Iſſue Male of his Body, is not an Eſtate-tail for Want of the Word *Heir.* 1 *Roll.* 837. altho' it was by Uſe.

A Feoffment to the Uſe of *J. S.* and the Iſſue Male of his Body, is not an Eſtate-tail for Want of the Word *Heir.*

If a Man gives Land to a Man and his Heir in the Singular Number, he hath but an Eſtate for Life; for his Heir cannot take a Fee-ſimple by Diſcent, becauſe he is but one, and therefore ſhall take nothing. *Co. Lit.* 8. *b.* So it is if it be to him or his Heirs. *Ibid.* So if it be to two *& hæredibus* without *ſuis. Ibid.* for the Uncertainty.

Heir in the Singular Number takes nothing but for Life:

So if it be to him or his Heirs.

So to two *& hæredibus* without *ſuis.*

Where

Where a Deviſe to the Heir at Law, upon a Condition, ſhall be adjudged a Limitation.

A **Where** a Deviſe is to the eldeſt Son, upon Condition that he pays ſuch Legacies; and if he refuſes, the Land ſhall remain to the Legatees: He refuſes, the Legatees may enter by Way of Limitation. *Noy* 51.

Dubious Words in a Will ought to be interpreted for the Heir's Benefit.

B **Dubious** Words in a Will ought to be interpreted for the Benefit of the Heir, and not to diſinherit him. *Ibid.* 185.

A Deviſe to a Stranger, after the Death of his Wife, ſhall deſcend to the Heir in the mean Time.

C **A Deviſe** to a Stranger, after the Death of his Wife, it ſhall deſcend to the Heir in the mean Time, and the Wife ſhall not have it. 2 *Lev.* 207.

The Heir ſhall be reimburſed by the Executor of the Obligor, who hath perſonal Aſſets.

D **Where** the Heir is ſued upon a Bond for the Debt of his Anceſtor, and pays it, he ſhall be reimburſed by the Executor of the Obligor, who hath perſonal Aſſets. 1 *Chanc. Rep.* 74.

Where a General Judgment.

E **Debt** againſt him, the Plaintiff had a Verdict and general Judgment, and not of the Lands deſcended, and held good. *Carthew* 93.

Where he ſhould confeſs Aſſets.

F **He** can't plead a Term of Years rais'd by his Anceſtor in Delay of Execution, but ſhould confeſs Aſſets. *Salk.* 354.

Falſe Plea.

G **And** if he ſo pleads, a General Judgment ſhall be given for his falſe Plea. *Ibid.* 355.

How to declare new Line.

H **Where** a Defendant is ſued as Heir, the Declaration need not ſhew how he is Heir. *Ibid.*

Judgment.

I **Where** Judgment againſt an Heir ſhall be General or Special. *Comber.* 162.

Pleading.

K **How** the Pleading ſhall be on the new Statute where the Heir aliens after his Anceſtor's Death. *Ibid.* 345.

Hæres viventis.

L **Where** there may be *Hæres viventis.* *Ibid.* 153, 155.

Equity.

M **How** the Heir is favoured in Equity. See *Mod. Caſes in Law and Equity* 32, 90, 122, 157, 159, 171.

That the Heir at Law ſhall have the advanced Rent.

N **Lands** were ſettled in Marriage on Truſtees, *&c.* that if the Wife ſurvived ſhe ſhould receive the Profits as they were then lett; the Huſband made Leaſes and advanced the Rent, and decreed that the Heir at Law ſhould have the advanced Rent. *Ibid.* 32.

A Will how to be eſtabliſhed.

O **A Will** not to be eſtabliſh'd againſt an Heir without a Trial at Law. *Ibid.* 90.

Where the Heir ſhall have the whole Lands.

P **Lands** deviſed to the Wife to be ſold to pay Debts, *&c.* not being ſold, if the Perſonal Eſtate will pay the Debts, the Heir ſhall have the whole Lands. *Ibid.* 122.

A **A Tenant** in Common dying in the Life of the Teſtator, his Moiety will deſcend to the Heir at Law. *Mod. Caſes in Law and Equity* 157. See 159.

Tenants in Common.

B **Lands** given in Truſt or deviſed to pay Debts, *&c.* ſhall be deemed as Money in Reſpect to the Creditors, but not in Reſpect to the Heir at Law. *Ibid.* 171. See 62.

Lands given in Truſt or deviſed to pay Debts.

C **The** Heir's Title by Deſcent is preferable to that of Purchaſe, *&c.* *Ibid.* 23.

The Heir's Title.

D **A Feoffment** to Uſes, the Reverſion in Fee to the Heirs of the Feoffor, his Heir takes by Diſcent; *aliter* in Wills and Deviſes. *Ibid.*

Where he takes by Diſcent.

E **Where** a Reſiduary Legatee ſhall not take by the Will, but the Heir. *Mod. Caſes in Law and Equity* 123, 124.

Where the Heir ſhall take by the Will.

F **Whether** a Lapſed Legacy ſhall go to ſuch Legatee, or the Heir. *Ibid.* 221.

Lapſed Legacy.

G **Where** one may take a Fee-ſimple by Deviſe without the Word *Heirs, &c. Ibid.* 253, 255, 256, 257, *&c.*

Where the Word *Heirs* not neceſſary.

H **Where** Iſſue of the Body is tantamount to Heirs. *Vide* **Wills and Words.**

Iſſue.

I **Where** he ſhall be relieved in Equity againſt the Penalty of a Bond. 3 *Salk.* 84.

Equity.

K **Where** he ſhall not be diſinherited upon doubtful Words in a Will. *Ibid.* 128.

Diſinherited.

L **Where** his Plea of *Riens per Diſcent* is not good. *Ibid.* 157.

Plea.

M **Debt** againſt him without ſhewing how Heir, is good. *Ibid.* 178.

Declaration.

N **Where** he ſhall be relieved againſt an Executor who hath Aſſets. *Ibid.* 179.

Relieved againſt an Executor.

O **Where** he ſells Land liable to the Debt of his Anceſtor before an Action brought againſt him, he ſhall anſwer the Value out of his own Eſtate. *Ibid.* 180.

Where he ſhall anſwer out of his own Lands.

P **Where** his Plea of *Riens per Deſcent præter reverſionem, &c.* is not good. *Ibid.*

Plea.

Vide Title **Diſcent**, *Vol.* 1. 635, *Let.* C, D, E. 636, *Let.* B, F, G, K. 637, *Let.* B, C. 638, A, B, E, F.

Heriot.

See Election.

Heriot, *Quid.*

A **An Heriot is the beſt Beaſt, whether it be Horſe, Ox, or Cow, that the Tenant dies poſſeſs'd of; and the Lord may either ſeiſe for Heriot-Cuſtom, or take a Diſtreſs for it, if it be Heriot-Service.** Note, **For Heriot-Cuſtom he may ſeize any where, but for Heriot-Service only upon the Land.** See Keil. 84. b. 82. a. Plow. 96. b.

An Heriot goes with the Reverſion.

B **An** Heriot ſhall go with the Reverſion, as well as the Rent, and the Grantee of the Reverſion ſhall have it alſo. 2 *Saund.* 166.

Is the firſt, and Mortuary the ſecond beſt Beaſt.

C **The** Heriot is the firſt, and Mortuary the ſecond beſt Beaſt. 1 *Keb.* 919. *Plow.* 23.

What is Heriot-Cuſtom, and what is Heriot-Service.

D **Heriot-Cuſtom** is where all the Lands holden of the Manor ſhall pay an Heriot at the Death of the Tenant: Heriot-Service is where it is Part of the Tenure only. See *Plow. Com.* 95, 96.

Heriot-Cuſtom is ſeizable.

Heriot-Service is diſtrainable.

What Remedy the Lord hath for them.

E **Where** a Man claims for Heriot-Cuſtom, he claims there for his own proper Cattle; in which Caſe he may ſeize them whenever he can find them. But for Heriot-Service he may diſtrain upon the Land, but cannot ſeize. *Benl.* 30. *pl.* 47. But *Moore* 713. that he may ſeize or diſtrain without Preſcription. *March.* 164, 165. See *Plow. Com.* 95. *b.* where it is ſaid, That for Heriot-Cuſtom a Man may ſeize and take as his own proper Goods, but that Heriot-Service is Parcel of the Tenure, and lies in Render; ſo that if it be not render'd, the Lord hath no other Remedy, for then he hath it for his Rent, or other Things, *viz.* a Diſtreſs: But ſee *Cro. Eliz.* 589, 590. The Court gave Judgment that Heriot-Service was ſeizable, and they took this Diverſity, *viz.* between the Tenure of yielding annually an Ox, and of rendring annually of his beſt Beaſt: In the firſt Caſe it is in the Tenant's Election what he will *render*, and in the laſt the Lord hath his Election what he will *prender*. See *Cro. Eliz.* 32. **But in** the 3 *Mod.* 231. it is held, That the Lord may diſtrain or ſeize for Heriot-Service; but that if he makes a Seizure, it muſt be the beſt Beaſt of the Tenant; but if he diſtrains, he may take any Perſon's Cattle upon the Land. See *Cro. Car.* 260. *Jones* 300. See alſo *poſtea.*

A **See** a Difference between Heriot-Service, and Heriot-Cuſtom, how it ſtands, in Caſe the Tenant ſells any Part of the Land: So alſo when the Lord purchaſes any Part. 8 *Rep.* 105, 106.

Heriot-Service. Heriot-Cuſtom. Sale of Part of the Land.

B **Note,** In Caſe of Heriot-Service, he ſays, That the Tenant died poſſeſs'd of an Ox, Price 5*l.* which was the beſt Beaſt: And becauſe the Heriot was in Arrear, and not delivered, the Defendant makes Conizance for taking of the Cattle *in Loco in quo, &c.* as *infra Feodum & Dominium.* 8 *Rep.* 114, to 121.

Diſtreſs for Heriot-Service.

C **But** it hath been ſince held by the Lord Chief Juſtice *Holt,* That either Heriot-Service, or Heriot-Cuſtom, is ſeizable off from the Manor; becauſe it lies *in prender:* But an Heriot reſerved by Deed, cannot be taken off from the Manor. *Show. Rep.* 81. *Mich.* 1 *W. & M. B. R.*

Where Heriots may be ſeized off from the Manor, and where not.

D **Heriot-Cuſtom** may be qualified by another Cuſtom; but Heriot-Service cannot. *Brewer*'s Caſe, *Paſch.* 5 *W. & M. B. R.*

Heriot-Cuſtom may be qualified, but not Heriot-Service.

E **None** but thoſe who die ſeized of the Fee-Simple, (except Copyholders in Fee) ſhall pay an Heriot to the Lord: For all Eſtates of Lives, Years, or Entail, are derivative Eſtates out of the Fee, and are not in Privity to the Lord, nor are held of him; but are held of the Perſon who hath the Inheritance. *Keilw.* 79. *b.* 80. *a.* 82. *a.* 84. *b.*

What Eſtates ſhall pay Heriots to the Lord.

F **In** a Replevin the Defendant avowed for Heriot-Service; the Plaintiff pleaded, That the Tenant *Nulla habuit animalia* at the Time of his Death; and upon a Demurrer, it was adjudged to be naught, becauſe he did not ſhew whether the Heriot ſhould be a Beaſt or other Thing. *Hob.* 176. 1 *Cro.* 186.

The Plaintiff ſays that the Tenant *Nulla habuit animalia* at his Death; and naught.

G **Where** a Covenant in a Leaſe for Lives is in the Disjunctive, to render the beſt Beaſt for an Heriot, or 40*s.* in Money at the Election of the Leſſor, upon the Death of any of the Lives: Here an Action will not lie, until the Leſſor gives Notice which he will accept, whether the beſt Beaſt, or the 40*s.*

Where an Action will not lie till Election.

H **If** an Heriot be reſerved upon a Leaſe, this is Heriot-Service. *Lutw.* 1366. And it is incident to the Reverſion, *Ibid.* 1367. and may be ſeized at any Place out of the Lands demiſed.

Heriot reſerved upon a Leaſe, is Heriot-Service.

I **A Leaſe** was made to *A.* for ninety-nine Years; if *B. C.* and *D.* or any of them, ſhould ſo long live; and it was to commence after the Determination of a former Leaſe, rendring Rent *poſt principium Termini, & reddendo poſt mortem B. C. & D. reſpective* for an Heriot 3*l.* *B.* dies before the Determination of the former Leaſe; and the Plaintiff brings Debt for 3*l.* for an Heriot upon the Death of *B.* And the Queſtion came to be, Whether it was due or no, the firſt Eſtate not being determined? And by three Judges againſt the Chief Juſtice, held, That the Action did not lie. 1 *Sid.* 437. 2 *Saund.* 165. See 3 *Mod.* 290. 231. *Cro. Car.* 313. *pl.* 5.

Debt for Money for an Heriot, ſuppoſed to be due before the Commencement of the Leaſe.

Whether upon a Reſervation of the beſt Beaſt, or 5 *l.* for an Heriot, Leſſor cannot diſtrain before Election.

A **Whether** the Leſſor may upon the Reſervation of the beſt Beaſt or 5 *l.* for an Heriot, diſtrain before he hath declared his Election; the better Opinion ſeemed to be that he may; but his Bailiff cannot. *Litt. Rep.* 33, 34.

Whether Leſſor may diſtrain for an Heriot, after the Leaſe determined.

B **A Leaſe** is made to *A.* for ninety-nine Years, if the ſaid *A.* and *B.* and *C.* or either of them, ſhould ſo long live, rendering and paying, upon the Death of either of them, their beſt Beaſt in lieu of an Heriot, or 40 *s.* in Money. *A. B.* and *C.* are dead, whereby the Leaſe is determined. And the Queſtion was, (the Leaſe being determined) Whether the Leſſor may diſtrain for an Heriot due upon the laſt *Ceſtuy que vie*; and the Court was divided: Two Judges held, That it was Heriot-Service, and that the Heriot was due immediately upon the laſt Death; for there was at that Inſtant a Reverſion in the Defendant, and then the Seiſure ſhall have a Retroſpect to that Time. The other two Judges held, That by the Words of the Reſervation, being *after the Death of every of them*, the Heriot is not due till after the Death; ſo that there was no Reverſion when it ſhould become due; and to make it to be Heriot-Service, it ought to be incident to a Reverſion. *Lut.* 1367, 1368.

An Avowry for an Heriot, how to be.

C **In** an Avowry for Heriot-Service, and ſays not what the Heriot is, it is naught. *Hob.* 176. *Cro. Car.* 260.

Says not in an Avowry what the beſt Beaſt ſhould be, nor what the Value is; yet good.

For Heriot-Service the Lord may either diſtrain or ſeize.

If he ſeizes, it muſt be the proper Beaſt of the Tenant; but he may diſtrain any Cattle upon the Land.

D **In** an Avowry for Heriot-Service it did not appear what Beaſt he ſhould have for the Heriot, nor of what Value; ſo that it is uncertain what Thing the Defendant ſhall have, or how he ſhall be ſatiſfied if he ſhould have a Return. It was anſwer'd, That when the Lord diſtrains, it is becauſe the Heriot is eſſoigned; ſo that he cannot ſhew what is the beſt Beaſt; and for Heriot-Service the Lord may either diſtrain or ſeize, if he can find it; but he cannot ſeize, unleſs the proper Beaſt of the Tenant only; but he may diſtrain any Man's Beaſts which are upon the Land, and retain them until the Heriot is ſatiſfied: And it was adjudged accordingly for the Avowant. *Cro. Car.* 260. *pl.* 4. ſee *Plow. Com.* 96. *b. Cro. Eliz.* 590.

A Feme Covert dies, no Heriot ſhall be paid.

And why.

E *Coke* and *Dodderidge*: Where there is a Cuſtom that every Tenant ſhall pay at Death a Heriot, a Feme ſole Tenant, who is Tenant to this Manor, takes a Huſband and dies, the Lord ſhall not have an Heriot, becauſe a Wife hath no Goods. 4 *Leon.* Caſe 277.

A Cuſtom for the Lord to have an Heriot of a Stranger, is naught.

F **A Cuſtom** for the Lord to have the beſt Beaſt of every one dying within his Manor, in the Name of an Heriot, is not good to bind a Stranger; but betwixt the Lord and his Tenants it is good. *Cro. Eliz.* 725. *Moor*, *pl.* 58.

A **A Cuſtom** of a Manor, that the Lord uſed to have an Heriot upon the Death of every free Tenant for each Parcel of Land held of him; adjudged a good Cuſtom; and ſee the Pleadings and Objections to them there over-ruled. 1 *Bulſt.* 99, 100.

A Cuſtom for the Lord to have an Heriot upon the Death of every free Tenant, and good.

B **In** Replevin the Defendant ſays, That all the Tenants for Life or Years of the Manor, have uſed to pay an Heriot after their Deaths: The Court held it to be repugnant, that they ſhould pay an Heriot after their Deaths; but if it had been that the Avowant and all thoſe whoſe Eſtates he hath, have had an Heriot after the Death, *&c.* there it had been good. 21 *H.* 7. 13. *a.*

A Cuſtom to have an Heriot after the Death of Tenant for Life of Years, how to be.

C **By** the Statute of 13 *Eliz. cap.* 5. it is enacted, That all fraudulent Gifts, Grants, *&c.* to defraud a Lord of his Heriots, *&c.* ſhall be void, and of none Effect, and ſhall forfeit the whole Value of the Goods; the one Moiety to the King, the other to the Party grieved: Upon this Statute there happened to be this Caſe: A Perſon who held cuſtomary heriotable Lands, being poſſeſs'd of thirty Horſes, did a little before his Death give the Horſes to the Defendant with an Intent to defraud the Plaintiff of his Heriot; and when the Plaintiff went to ſeize his Heriot, the Defendant took the ſaid Horſes by Reaſon of his Gift; for which the Plaintiff brought his Action for 200 Marks, being the Value of all the Horſes; and the Queſtion came to be, Whether the Plaintiff ſhould have the Value of all the Horſes, or only of one, which was to have been his Heriot? And adjudged that he ſhould have only one; but that he might ſet a Price upon any of the thirty Horſes, and demand the Value of that Horſe as forfeited by the Statute. 2 *Leon.* Caſe 10.

The Statute which provides againſt fraudulent Gifts of Goods, to prevent the paying of Heriots is, 13 **Eliz. cap.** 5.

A Cuſtomary had thirty Horſes, and a little before his Death gave them away to prevent ſeizing for Heriots.

He ſhall not have the Value of all, but of any one which he pleaſeth.

D **Heriot-Cuſtom** or Heriot-Service may be ſeized any where, but not diſtreined for out of the Manor. *Salk.* 356.

Where to be ſeized.

E **Where** a Heriot is due upon the Death of the Copyholder, it can't be altered by any Act of his. *Ibid.* 189.

Not to be alter'd.

F **A Surrender** was made to three ſucceſſively, a Heriot is due upon the Death of each Tenant. 3 *Salk.* 181.

How due.

G **Heriot-Service**, when and how to be paid. 3 *Salk.* 182, 332.

When and how to be paid.

Highway-Man, See { **Sheriff.**
{ **Felon and Felony.**

Highway, See **Ways.**

Homage.

Homage, *Quid.*

Homage is the moſt honourable and humble Service of Reverence that a Freehold-Tenant can do to his Lord: For when he makes his Homage he ſhall be ungirt, and his Head uncovered, and his Lord ſhall ſit, and he ſhall kneel before him upon both Knees, and hold his Hands together between his Lord's Hands, and ſay, I become your Man from this Day forward, of Life, and of earthly Worſhip, and unto you ſhall be true and faithful, and bear you Faith for the Tenements that I claim to hold of you (ſaving the Faith that I owe to our Sovereign Lord the King); and the Lord ſo ſitting ſhall kiſs him. *Litt. ſect.* 85. A

Who may do or receive Homage.

None ſhall do Homage, or receive Homage, but only ſuch as have an Eſtate in Fee-ſimple or Fee-tail, either in their own Right, or in the Right of another. *Kitchen* 131. *b.* B

A Woman having Lands in Fee-tail marries and has Iſſue, the Husband ſhall do Homage: But before Iſſue had, it muſt be done in both their Names.

If a Woman having Lands in Fee-tail takes a Huſband, and they have Iſſue; the Huſband in his Wife's Life ſhall do Homage; but before Iſſue had, the Homage muſt be in both their Names. *Ibid.* C

A Corporation cannot do Homage.

A Corporation cannot do Homage, for they cannot appear but by Attorney; and Homage being perſonal, cannot be done by Attorney. 33 *H.* 8. *cap.* 15. D

What Seiſin in Homage is.

Seiſin of Fealty is Seiſin of Homage, Fealty and Eſcuage: For when a Tenant makes his Fealty, he takes an Oath, that he will be faithful and loyal to his Lord, and bear Faith to him for the Tenements that he claims to hold of him; and that he will lawfully do and make the Cuſtoms and Services that he ought to do. 4 *Rep.* 8. E

Seiſin of ſuperior is Seiſin of inferior Services.

Seiſin of ſuperior Services is Seiſin of inferior Services incident thereunto; as Seiſin of Homage is Seiſin of Fealty, and Seiſin of Rent is Seiſin of Fealty. 4 *Rep.* 8. *b.* F

Homine Replegiando.

A **Where one Man conveys away ſecretly, or keeps in his Cuſtody another Man againſt his Will; then upon Oath made thereof, and a Petition to the Lord Chancellor, he will grant a Writ of** Replegiari Facias, **with an** Alias **and** Pluries, **upon which the Sheriff returns an** Elongatus, **and thereupon iſſues out a** Capias in Withernam, **made by the Filazer: And when he is thereupon taken, the Sheriff cannot take Bail for him: But the Court where the Writ is returnable may, if they think fit, grant an** Habeas Corpus **to the Sheriff to bring him into Court and bail him, or elſe remand him.**

What the Writ of *Homine Replegiando* is, and where it lies.

B **Formerly** the Court was of Opinion, That one taken upon a *Capias in Withernam* was not bailable; but *Mich.* 12 *W. Rot.* 81. *B. R. inter Moore & Watts,* in an *Homine Replegiando,* where the Defendant was in Cuſtody upon a *Capias in Withernum;* the Court, after great Conſideration, admitted the Defendant to Bail, who thereupon drew up his Plea of *Non cepit,* and delivered it to the Filazer; and being in Court, the Plaintiff was called three Times to proſecute his Writ; which he did not; whereupon there was Judgment.

Where a Defendant was bailed, and pleaded *Non cepit.*

The Plaintiff non-ſuited.

C **The** Entry of which Judgment is thus: *Ad quem diem ſcilicet ad præd' Octab' S. Martini* (which is the Retorn of the *Capias in Withernam*) *coram Domino Rege apud Weſtm' præd' Samuel Watts, ductus fuit hic in Curiam ſub Cuſtodia præd' Vic' Com' Midd' Virtute præd' brevis de Capias in Withernam, & obtulit ſe verſus præfat' Thomam Moore de placito, quare idem Samuel cepit & captum tenuit præd' Thomam Moore. Et præd' Thomas Moore ſolemniter exact' non venit nec eſt breve ſuum de Homine Replegiando præd' ulterius proſecut' Ideo conſideratum eſt quod præd' Thomas Moore ſit in miſericordia. Et præd' Samuel Watts eat inde ſine die, &c.*

The Judgment.

D **Alſo,** in the Caſe of *De la Baſtide* againſt *Reynel & Ux. Paſch.* 5 *W. & M.* in an *Homine Replegiando,* the Sheriff returned an *Elongata,* whereupon a *Capias in Withernam* iſſued; then the Defendant enter'd an Appearance with the Filazer; (*Note,* It doth not appear here as in the former Caſe, that the Defendant was in Cuſtody) and a Motion was made for a *Superſedas* to the *Withernam,* and

Elongata Capias in Withernam.

Superſedeas prayed.

that

Sheriff's Return is traverſable.

that they would plead *Non cepit*, they not being concluded by the Sheriff's Return, which is traverſable. This was oppoſed by the Counſel on the other Side, unleſs they would give Bail to deliver the Perſon, if the Iſſue ſhould be found againſt them.

When to gage Deliverance.

Curia. As to this Matter, there is no Difference between a Common Replevin, and an *Homine Replegiando*; neither is there any other Return to it than an *Averia Elongata*: And if the Defendant had claimed Property, then they are to gage Deliverance: But that is not done here, for they ſay they have not the Perſon, therefore let them plead *Non ceperunt*, and let a *Superſedeas* go.

Where the Defendant ſhall not be obliged to gage Deliverance.

A In an *Homine Replegiando*, the Defendant pleads *Non cepit*; the Defendant ſhall not be compelled to gage Deliverance: And a *Superſedeas* was granted to the *Withernam*. *Paſch.* 5 *W.* & *M.* *De la Baſtide*'s Caſe.

Where the Court admitted the Defendant to appear and plead after an *Elongata* returned, and a *Withernam* executed.

B In an *Homine Replegiando*, after an *Elongatus* and a *Withernam* executed, and the Defendant in Gaol, the Court admitted him to appear and plead to the firſt Writ. *Euſtick*'s Caſe. 9 *W.*

Homine Replegiando.

C See more of this Matter in *Deſigny*'s Caſe, upon an *Homine Replegiando* brought by one *Turbett*. *Raymond*'s *Rep.* 474, 475.

The Proceedings.

D *Homine Replegiando*, the Defendant appearing, and Proceedings therein. *Carthew* 2.

When to plead.

E Upon a *Homine Replegiando* iſſued, and an *Eloignment* returned by the Sheriff, he againſt whom the Writ iſſued coming upon Proceſs cannot plead 'till he bring in the Body. *Skinner* 61, 72.

When the Court may commit, and when take Bail.

F The *Eloignment* is a Contempt for which the Court will commit 'till the Body be brought in; and the Sheriff's Return of the *Eloignment* is a ſufficient Foundation, and not traverſable; but if the Party will gage Deliverance, the Court may let him to Mainprize. *Skinner* 62, 76.

Where the Writ of *Withernam* was ſuperſeded.

G An *Homine Replegiando* being brought againſt the Defendant for the Wife of the Plaintiff, and an *Elongat* returned, before the Return the Defendant appears and enters a Plea of *Non ceperunt* with the Filazer; but upon Miſtake a *Withernam* was awarded, which the Court upon Motion ſuperſeded, for the Party might appear at the Return of the *Replegiare*, and plead *Non ceperunt*, and then no *Withernam* ought to be awarded. *Skinner* 337.

Hors de ſon Fee, See { **Aid Prier.**
Avowry.

Hue and Cry.

See { **Felon and Felony.** **Hundred.** **Notice.** **Robbery.** }

A HUE and Cry is a Purſuit after one having committed a Robbery upon the Highway; for if the Party robbed, or any in the Company of one that was murdered or robbed, cometh to the Conſtable of the next Town and acquainteth him with the Matter, and deſires him to raiſe Hue and Cry, or purſue the Offenders, deſcribing the Perſons as near as he can, and which Way gone: The Conſtable ought forthwith to call upon the Pariſh for Aid to ſeek for the Offenders; and if they be not found, then to give Notice to the next Conſtable, and he to the next to him, until the Offenders be apprehended. 13 E 1. cap. 1, 2. 28 E. 3. cap. 11. called the Statute of *Winton*.

Hue and Cry, what it is.

13 E. 1. cap. 1, 2. 28 E. 3. cap. 11.

B Upon a Trial in this Caſe the Party muſt file his Original, and be ſure to have a true Copy thereof, and Witneſſes to prove it, whereby he may appear to the Court to be according as the Statute directs: He muſt alſo have the Affidavit, and a Witneſs to prove the taking of it.

What the Party muſt do on a Trial in this Caſe.

C If a Robbery be begun in the Hundred of *Dale*, and ended in the Hundred of *Sale*; the Hundred of *Dale* is chargeable for this Robbery, upon the Statute of *Wincheſter*. 1655. *B. S.* But *Quære*, for it ſeems both ſhould be chargeable.

Robbery begun in one Hundred, and ended in another; which is chargeable.

D When a Recovery is againſt a Hundred, the Sheriff may levy his Execution upon any one, or more, in the Hundred, as he ſhall think fit: But the Juſtices of Peace at their Seſſions will make a Rate to apportion it upon the whole Hundred; and thoſe upon whom the ſame has been levied, ſhall be reimburſed thereby.

If a Recovery be againſt a Hundred, the Sheriff may levy it on any of the Inhabitants; but Juſtices in Seſſions will apportion it.

What ſhall be allowed to be a lawful Hue and Cry.
27 Eliz. c. 13. Sect. 10.

No Hue and Cry or Purſuit ſhall be allowed a lawful Hue and Cry and Purſuit, unleſs made by Horſemen and Footmen. 27 *Eliz. cap.* 13. *Sect.* 10. *Vide poſtea.* A

Where it is *in diviſis hundredorum*, Notice to either Hundred is ſufficient.

Where the Robbery is committed *in diviſis hundredorum*, if Notice be given to the Inhabitants of either of them, it ſufficeth. *Cro. Jac.* 675. *pl.* 10. B

It muſt be to ſome Vill, *prope* the Place of the Robbery.

Tho' in another County.

Note, it is ſafe to ſay he gave Notice at ſuch a Vill, *prope* to the Place where the Robbery was committed; and tho' that Place where Notice is given, is in another County, yet it is good enough. *Cro. Car.* 41. *pl.* 3. C

Or another Hundred.

So alſo, tho' in another Hundred. *Cro. Car.* 379. *pl.* 5. D

When the Suit muſt be commenc'd.

The Suit muſt be commenc'd within one Year after the Robbery. 27 *Eliz. cap.* 13. *Sect.* 9. E

What the Party robbed is to do for the Recovery of his Money, by the Stat. of *Winton* againſt the Hundred.

27 Eliz. cap. 13.

Where the Hundred ſhall be excuſed.

When the Party robbed is to make Oath.

Where a Robbery is committed, Notice muſt be given thereof to ſome of the Inhabitants of ſome of the Vills near the Place where the Robbery was committed, to the Intent that they may make Hue and Cry, and apprehend the Robbers, or elſe no Action lies againſt the Hundred. 27 *Eliz. cap.* 13. 7 *Rep.* 7. *a.* And if any of the Robbers are taken within forty Days after the Robbery committed, and be thereof convicted; then the Hundred where the Robbery was committed ſhall be excuſed. 3 *Lev.* 320. But if not, then after the forty Days are paſt, the Party robbed muſt make an Oath before a Juſtice of the Peace of the County where he was robbed, of the Time and Place of the Robbery, and of what he was robbed, and that he knew none of the Robbers; and then within twenty Days after this Oath, the Plaintiff, by the Statute of 27 *Eliz. cap.* 13. muſt bring his original Writ out of the Court of Chancery againſt the Hundred, which muſt be ſued out within a Year after the Robbery committed. How to order Matters upon a Trial in this Cauſe, ſee *ante*. F

27 Eliz. cap. 13.

When the Writ to be brought by the Statute of 27 Eliz. cap. 13.

A Robbery in *Berkſhire*, and Oath made in *London* before a Juſtice of Peace in *Berks*, and good.

A Robbery was committed *in Com. Berks*, and the Oath was made in *London* before a Juſtice of the Peace who lived in *Berks*, and held to be good, tho' not made *in Com. Berks.* *Cro. Car.* 211. *pl.* 3. 212, 213. G

Where the Servant is robbed his Oath is ſufficient, and his Maſter may bring the Action.

Where the Servant is robbed of his Maſter's Money, the Maſter may bring the Action; and his Man ſwearing that he was robbed, and knew none of the Robbers, is ſufficient without his Maſter's Oath. *Cro. Car.* 37. *pl.* 2. 336. *pl.* 22. H

A **Inhabitants** within the forty Days find a Thief in the Preſence of a Juſtice of Peace, and charge him with the Felony; this ſhall excuſe the Hundred: For the charging of him in the Preſence of a Juſtice of the Peace, in whoſe Power he was, is ſufficient. 2 *Lev.* 4.

Charging of a Thief in the Preſence of a Juſtice of Peace excuſes the Hundred.

B **An** Oath was made of a Robbery by three Perſons unknown, and doth not ſay that either, or every of them, was unknown: For tho' he doth not know all, yet he may know ſome of them; but yet it ſeemed good. 3 *Lev.* 328.

How the Oath to be, as to the Knowledge of the Parties.

C **Two** Servants, each having Money of their Maſter's in their Poſſeſſion, were robbed; one took the Oath according to the Statute, of the Robbery: This is not ſufficient to entitle the Maſter to an Action for the Money in the Poſſeſſion of the other Servant. *Show. Rep.* 94.

The Perſon robbed muſt make the Oath, tho' a Servant.

D **The** Declaration was, That the Plaintiff was robbed of 20 *l. de denariis ſuis propriis*; and upon the Evidence it appeared to be that it was his Lady's Money; but held good notwithſtanding. 4 *Leon. Caſe* 135. Alſo the Maſter might have brought it. 4 *Leon. Caſe* 180.

The Man robbed, and brought an Action for the Money in his own Name, (tho' his Maſter's Money) and held good.

E **Alſo**, if he that is robbed, after he hath made Hue and Cry, doth not further purſue the Felons, yet his Action lies. *Ibid.*

If the Party robbed makes Hue and Cry, it is ſufficient without purſuing the Felons.

F **Where** a Servant is robbed he muſt be ſworn; but if the Maſter had been preſent, it had been a Robbery of the Maſter. *Show. Rep.* 241.

Not where the Maſter is preſent.

G **Where** a Robbery is committed on a *Sunday*, or in the Night, the Hundred ſhall not be chargeable: For People are ſuppoſed to be at Church, and not to travel then: Alſo it is againſt the Statute of 29 *Car.* 2. *cap.* 7. See Title **Sunday.**

Where the Hundred ſhall not be chargeable.

29 **Car.** 2. **cap.** 7.

H **Nor** for robbing of an Houſe in the Day-time. *Cro. Eliz.* 753. *pl.* 13.

Not for breaking open and robbing of an Houſe.

I **A Declaration** upon the Statute of *Winton* was amended after Iſſue joined, and a Trial at the Bar ordered. 3 *Lev.* 346, 347.

A Declaration amended after Iſſue joined.

K **Tho'** the Party puts more in his Declaration than he can prove, yet for ſo much as he proves it is well enough. *Cro. Jac.* 348. *pl.* 1.

The Declaration is good, tho' brought for more than can be proved.

L **In** an Action upon the Statute of *Hue and Cry*, the Declaration is good, tho' the Plaintiff doth not ſay, That the Juſtice of Peace, who took the Oath, lived *prope locum* where the Robbery was committed: Becauſe this is but directory, and is no Exception, either in Evidence, or to arreſt Judgment. *Mich.* 6 *W. Hundred. de Odiham.*

How the Declaration to be as to Place.

Declaration doth not ſay *tempore diurno*, it is naught upon a Demurrer, but good after a Verdict.

A **In** an Action upon the Statute of *Hue and Cry*, it is not ſaid in the Declaration, That the Robbery was *tempore diurno*, not in the Highway: This is naught upon a Demurrer; but being after a Verdict, it is well enough: For it ought to be proved, and was certainly proved at the Trial, otherwiſe the Plaintiff could not have had a Verdict. *Mich. 6 W.* See *Show. Rep.* 60. *Hundred of Odiham*'s *Caſe*.

If the Hundred be right, tho' the Pariſh not, yet it is good.

B **Altho'** there be a Miſtake of the Pariſh in the Declaration, where the Robbery was committed, yet if it were the right Hundred, it is well enough. 2 *Leon. Caſe* 212.

A Man ſeiſed in one Hundred, and carried into another Hundred, and there robbed; where the Action to be brought.

C **A Man** was ſeized upon by Thieves in one Hundred, and carried into a Coppice in another Hundred near the Highway, and there robbed. The Action muſt be brought againſt the Hundred wherein the Robbery was committed, and not in the Hundred where the taking of the Man was: Becauſe the Statute mentions particularly the Hundred where the Robbery was committed ſhall be liable to anſwer the Bodies of the Robbers, or one of them, within forty Days, or pay the Money loſt. *Hundred of Baſingſtoke*'s *Caſe*. *Hill.* 1 *Annæ*, *B. R.*

Seizure in one Hundred, and Robbery in another.

D **Where** a Carrier's Pack-Horſes are ſeized upon by Thieves in one Hundred, and carried into another Hundred, and there the Packs are cut open and rifled; there the Robbery was in the firſt Hundred, where the Horſes and Packs are taken, and not in that where they were cut open.

Why the Hundred anſwers the Money.

E **Note**, The Reaſon of a Hundred's anſwering the Money robbed, is becauſe they do not take the Bodies of the Offenders within forty Days.

Seized by Day-light, and robbed in the Night.

F **Where** a Man is ſeized in one Hundred, and carried into another Hundred by Day-light, and afterwards robbed in the Night; there the Party robbed is without any Remedy. *Ibid.*

Seized in one Hundred, and carried into a Dwelling-houſe in another Hundred, and there robbed.

G **Alſo** where a Man is ſeized in one Hundred, and carried into a Dwelling-houſe inhabited in another Hundred, and there robbed, neither Hundred is liable; becauſe the Statute doth not extend to Robberies in Houſes. *Ibid.* and 7 *Rep.* 6. *eodem Termino.* 3 *Leon. Caſe* 350.

Action lies for a Robbery in the Day-time, tho' not in the Highway.

H **Alſo** agreed by the Court, that an Action lies for a Robbery in the Day-time, altho' not in the King's Highway. *Hill.* 1 *Annæ*, and 1 *Mod.* 221. But not for a Robbery in the Morning before it was light. 7 *Rep.* 6. *b.* But if preſently after Sun-ſet, if it be light, it does well lie. 7 *Rep. ibid. Cro. Jac.* 106. *pl.* 45.

Not before Day.

How the Verdict ſhall be in an Hue and Cry.

And how the Judgment.

A **The** Jury found the Hundred guilty *quoad captionem aſportationem & ſpoliationem infraſcript'* to ſo much, and not guilty to the Reſidue; and the Judgment was, That the Defendant *in miſericordia. Et quod reſiduum quod quer' nil cap' per breve & ſit in miſericordia:* And moved that the Hundred cannot be *captione, &c.* But it ſhould have been, that they were guilty in not taking the Thieves, nor anſwering of the Money. *Cro. Jac.* 348. *pl.* 1. See Title **Judgment.**

The Inhabitants of the Hundred where freſh Suit ſhall not be, ſhall anſwer half the Damages. 27 **Eliz. cap.** 13. **Sect.** 2.

How to be recovered.

B **The** Inhabitants of every Hundred, with the Franchiſes and Precincts thereof, where Default of freſh Suit after Hue and Cry made ſhall happen to be, ſhall anſwer one Moiety of the Money and Damages as ſhall be recover'd againſt the Hundred where the Robbery was committed, which Moiety ſhall be recover'd to the Uſe of the Inhabitants of the Hundred where the Robbery was committed, in the Name of the Clerk of the Peace of the County, and not in his own Name, by Action of Debt, in any of the Courts at *Weſtminſter*.

A Remedy for thoſe to have Contribution againſt whom the Execution hath been executed.

C **That** after Execution of Damages had by the Party robbed, then upon Complaint by the Party or Parties ſo charged, two of the Juſtices of the Peace, (one of the *Quorum*) inhabiting within the ſaid Hundred, or near thereto, where any ſuch Execution ſhall be had, ſhall aſſeſs and tax rateably, according to their Diſcretions, all the Towns, Pariſhes, Vills, Hamlets, and Liberties within the Hundred where the Robbery was committed, towards an equal Contribution, to be had and made for the Relief of thoſe Inhabitants upon whom ſuch Execution was executed: And after ſuch Tax made, then the Conſtable and Headborough of every ſuch Town, Pariſh, Vill and Hamlet ſhall, within their Limits, rateably and proportionably tax and aſſeſs every Inhabitant and Dweller in ſuch Town, Pariſh, Vill and Hamlet, for the Payment of ſuch Taxation and Aſſeſſment as ſhall be made upon every ſuch Town, Pariſh, Vill and Hamlet, as aforeſaid, by the ſaid Juſtices. And if any Inhabitant ſhall refuſe and deny to pay the ſaid Tax to the ſaid Conſtables or Headboroughs, then they, and every of them, in their ſeveral Limits and Juriſdictions, ſhall diſtrain all and every Perſon ſo refuſing and denying, by his or their Goods and Chattels, and to ſell the ſame and retain the Money to the Uſe aforeſaid, returning the Overplus to the Party diſtrained.

Diſtreſs for refuſing to pay.

And Sale of the Goods.

The Conſtable muſt deliver the Money collected to the Juſtices.

D **The** Conſtables and Headboroughs, within ten Days after ſuch Collection, ſhall pay the Money collected to the Juſtices, or one of them, to be paid over to the Inhabitants, for whoſe Uſe collected; which Juſtices ſhall forthwith pay it over accordingly. *Sect.* 6.

How to be levied on the Hundred where there ſhall be Default of Purſuit.

A **The** like Taxation and Aſſeſſment, and Levy by Diſtreſs, ſhall be in every other Hundred, where Default or Negligence ſhall be of Purſuit, for and towards the Payment of the one Moiety. *Sect.* 7.

B **Reſolutions** on the Statute of *Hue and Cry.* 3 *Salk.* 184.

Where cured after a Verdict.

C **Verdict** againſt the Defendant, and tho' the Plaintiff did not ſet forth that the Robbery was in the Highway, yet good. *Carthew* 71.

Maſter and Servant.

D **Where** the Servant may bring the Action againſt the Hundred, and where the Maſter muſt do it. *Ibid.* 145.

Hundred-Court, See **Courts.**

Idemptitate Nominis.

Idemptitate Nominis, what.

E **THIS is a Writ, and lies where a Writ of Debt, Covenant, or ſuch like, is brought againſt a Man, and another who hath the ſame Name as the Defendant hath, is taken up for him; then he ſhall have this Writ, whereby it ſhall be inquired, Whether he be the Perſon or no?**

Where it lies. 37 **E.** 3. **cap.** 2.

F **It** lies for the wrongful Seizure of another's Perſon, Lands, or Goods. 37 *E.* 3. *cap.* 2.

Executors ſhall have it. 9 **H.** 6. **cap.** 4.

G **By** the Statute made 9 *H.* 6. *cap.* 4. it is enacted, That Executors may have this Writ, and it ſhall be well maintainable for them.

After Verdict, Judgment, and Execution awarded.

H **A Writ** *de Idemptitate Nominis* was ſued out and allowed after Verdict, Judgment, and Execution awarded. *Cro. Jac.* 623. *pl.* 16.

Where it will lie, and where not.

I **Where** there are two Men of one Name, and one of them is ſued without any Name of Place or Addition to diſtinguiſh him, this Writ will not lie; becauſe the Man ſued, where there is no Addition of *Junior*, is always taken to be the *Senior*; and if the *Junior* be taken for him he may have Falſe Impriſonment. *Hob.* 330.

Ideocy.

See { **Attorney.**
Diſability.
Non Compos Mentis.

A **AN Ideot is a Fool natural from his Birth, and knoweth not how to count or number Twenty, or cannot name his Father or Mother, or ſuch-like eaſy and common Matters.**

Ideocy, what.

B **The** King ſhall have the Profits of the Lands of an Ideot after Office found, but not before: For by this it appears by the Record, That the King hath a Right to ſeize the Land; and yet it ſhall have Relation to the Time of his Birth, to avoid all *Meſne* Acts made by him. 8 *Rep.* 170. *a.* 11 *Rep.* 77. *a.*

Ideocy, when the King ſhall have the Profits.

When all *Meſne* Acts ſhall be avoided.

C **The** King hath not this in reſpect of any Seigniory, but *jure Protectionis ſuæ Regiæ*; becauſe his Subject is not able to govern himſelf, nor his Lands and Tenements: But the Eſtate ſhall be charged with the finding of Neceſſaries for himſelf and his Family, after Office found. 1 *Rep.* 170. *b.*

Why the King ſhall have the Profits.

The Ideot and his Family ſhall be maintained out of his Eſtate.

D **An** Ideot *a Nativitate* cannot appear by Attorney. 2 *Saund.* 335, 336.

Cannot appear by Attorney.

E **An** Ideot ſhall be bound to pay for Proviſions for his Houſe-keeping, in the ſame Manner as an Infant is. 2 *Sid.* 112.

He ſhall be bound to pay for Proviſions for his Houſe.

F **He** may contract Matrimony, and it ſhall bind him. *Ibid.*

He may contract Matrimony.

G **A Deed** of Surrender made by an Ideot, is void *ab initio*. *Carthew* 435. *Comber.* 438.

Surrender.

H **Where** his Act is void, and where voidable. 3 *Salk.* 300.

Void and voidable.

I **Any** Deed executed by an Ideot, is void as to all but himſelf. *Comber.* 438, 468.

Grant of an Ideot.

A Grant may be made of the Cuſtody of an Ideot, and his Lands to the Grantee, his Executors, Adminiſtrators, and Aſſigns. *Skin.* 4, 138. A

Inquiſition.

An Inquiſition finding the Party an Ideot *per* 8 *Annos ultime elapſos* is repugnant. *Ibid.* 5. B

Marry an Ideot.

An Information was granted againſt one for contriving to marry a Woman to an Ideot. *Mod. Caſes in Law and Equity* 98. C

Jeofails.

See { **Amendment.**
Demurrer.
Iſſue.
Writ. }

Jeofail, what.

Jeofail is when the Parties to any Suit in Pleading have proceeded ſo far, that Iſſue is joined to be tried by a Jury, and this Pleading or Iſſue is ſo badly pleaded or joined, that it will be Error if they proceed; then this may be ſhewn to the Court, as well after Verdict, and before Judgment, as before the Jury are charged. D

Uncertainty in a Declaration not aided after Verdict.

Uncertainty in a Declaration, which is Matter of Subſtance, is not aided by this Statute after a Verdict; as in Treſpaſs for taking of his Fiſhes, and doth not ſet forth the Number or Nature of them, is naught. 5 *Rep.* 35. E

Curable Faults aided as well by Confeſſion as otherwiſe.

Faults that are curable are as well aided where they appear by Confeſſion, as otherwiſe. *Hob.* 281, 282. F

Verdict helps an uncertain or larger Iſſue than needs.

If an Iſſue joined be uncertain and confuſed, yet a Verdict will help it. *Hob.* 113. So likewiſe a Verdict upon an Iſſue larger than needs, is good. *Ibid.* 119. G

If Iſſue be joined upon a collateral Point, and no Place alledged for the *Venue*, aided; but otherwiſe if Iſſue be not join'd upon a collateral Point.

If an Iſſue be joined upon a collateral Point, and there be no Place alledged whence the *Venue* may come, this is aided by the Statute of *Jeofails*; but if the Iſſue be not joined upon a collateral Point, and there is no Place alledged from whence the *Venue* may come, it is not helped by the Statute. *Mich.* 22 *Car. B. R.* Vide *the Statute.* H

A **Where** the Inſufficiency of pleading a Licence is aided by the Statute of *Jeofails* after Verdict. 2 *Saund.* 328.

Inſufficiency of pleading a Licence, where aided.

B **Where** an Averment was judged ſufficient after Verdict. *Idem* 352. and 1 *Saund.* 227, 228.

Averment judg'd ſufficient after Verdict.

C **Where** it ſhall be intended after Verdict, that the Plaintiff's Cattle were in that Part of the Land in which the Plaintiff claims Common, altho' he does not make expreſs Mention of it. *Ibid.* 227.

After Verdict it ſhall be intended that the Plaintiff's Cattle were where he claims Common.

D **Where** the Want of the Words *levant & couchant* is aided after Verdict by the Statute of *Jeofails*. *Idem, ibid.*

Want of the Words *levant & couchant* aided after Verdict.

E **No** Judgment or Record ſhall be refuſed or annulled for any Error in any Record, Proceſs, or Warrant of Attorney, Original Writ, or Judicial, Panel or Return, in any Places thereof razed or interlined; or in any Addition, Subſtraction, or Diminution of Words, Letters, Titles, or Parcels of Letters therein found; which Racings, Interlinings, Addition, Subſtraction, or Diminution, at the Diſcretion of the Judges, where the ſaid Records, or Proceſs by Error, or otherwiſe, is certified, do appear ſuſpected.

The firſt Statute of *Jeofails.* 8 H. 6. cap. 12.

F **That** the Judges of the Courts, where any Record, Proceſs, Word, Plea, Warrant of Attorney, Writs, Panel or Return ſhall be, ſhall have Power to examine ſuch Records, Proceſs, Words, Pleas, Warrants of Attorney, Writs, Panels or Returns, and to reform and amend what they ſhall think to be the Miſpriſion of the Clerk, except Appeals and Indictments.

G **Alſo** by another Statute it is enacted, That the Juſtices before whom any Miſpriſion ſhall be found in any Records and Proceſſes, which ſhall come before them, as well by Error, as otherwiſe; or in any Returns to be made by Miſpriſion of Clerks of any of the Courts, or of the Sheriffs, Under-Sheriffs, Coroners, their Clerks, or other Officers, Clerks or Miniſters, in writing one Letter or one Syllable too much, or too little, ſhall have Power to amend ſuch Miſpriſions and Defaults according to their Diſcretions.

The next Statute of *Jeofails.* 8 H. 6. cap. 15.

H **Provided**, That this Statute ſhall not extend to Proceſſes and Records of Felonies and Treaſons.

I **After** Verdict in a Court of Record, there ſhall be no Stay of Judgment for Want of Form, falſe *Latin*, Variance, Want of Original Writ, Count, Declaration, or Warrant of Attorney; nor for any imperfect or inſufficient Return of any Sheriff; neither ſhall any Judgment be reverſed for any the Defects or Cauſes aforeſaid. 18 *Eliz.* *cap.* 14.

The Act for Reformation of *Jeofails.* 18 Eliz. cap. 14.

K **This** ſhall not extend to Appeals, or Indictments, nor to any Actions upon Popular or Penal Statutes.

To what it ſhall not extend.

An Act to help Miſ-pleadings, and ſeveral other Matters.

32 H. 8. cap. 30.

A **If** any Iſſue be tried in any Action or Suit, in any of the King's Courts of Record, the Judge ſhall proceed to give Judgment therein, any Miſpleading, Lack of Colour, inſufficient Pleading, Miſcontinuance, or Diſcontinuance, Miſconceiving of Proceſs, Miſjoining of the Iſſue, Lack of Warrant of Attorney, or any other Default or Negligence of any of the Parties, their Counſellors, or Attorneys, had or made to the contrary notwithſtanding; which Judgments ſhall ſtand firm without being reverſed by Writ of Error.

2 E. 6. cap. 32.

B **There** is a Penalty againſt the Attorney for not filing of his Warrant of Attorney, and to ſuffer Impriſonment at the Diſcretion of the Court. Made perpetual by 2 *Ed.* 6. *cap.* 30.

Stat. of *Jeofails* helps only Matters of Form.

C **The** Statute of *Jeofails* helps only Matters of Form, not Subſtance. 5 *Rep.* 35. *a.* 36. *a.*

Helps informal, not immaterial Iſſues.

D **It** helps informal Iſſues after a Verdict, but not immaterial Iſſues.

Trials by a Jury of the proper County help'd.

16 & 17 Car. 2. c. 8. Sect. 1.

Where Miſ-trials are help'd.

E **By** the Statute of *Jeofails*, 16 & 17 *Car.* 2. *c.* 8. *Sect.* 1. Trials that are tried by a Jury of the proper County are good. This Statute helps a Miſtrial in a proper County, but not where the County is miſtaken. 1 *Mod.* 24. See **Trials.**

After Verdict in an Inferior Court, are aided.

F **Diſcontinuance** after a Verdict in an Inferior Court, is aided by the Statute of *Jeofails.* 4 *Jac.* 2. *B. R.*

The Statute of 4 & 5 *Annæ*, and all the Statutes of *Jeofails*, extend to all Courts of Record.

G **The** Act of 4 & 6 *Annæ*, *For the Amendment of the Law*, ſays, That that Act, and all Statutes of *Jeofails*, ſhall extend to all Suits in any Courts at *Weſtminſter*, for the Recovery of a Debt owing, or for any Revenue belonging to the Queen; and alſo to the Courts in the Counties Palatine of *Lancaſter*, *Cheſter*, and *Durham*, *Wales*, and all other Courts of Record within this Kingdom. See Title **Demurrers.**

To what this and all other the Statutes ſhall extend particularly.

And to what not.

4 & 5 Ann.

H **That** all the Statutes of *Jeofails* ſhall be extended to Judgments, which ſhall be entred upon Confeſſion, *Nil dicit*, *&c.* in any Court of Record; and ſuch Judgment not to be revers'd nor ſtay'd upon any Writ of Inquiry of Damages executed thereon, by Reaſon of any Omiſſion or Defect whatſoever, which would have been aided by any of the Statutes of *Jeofails* after Verdict; ſo that an Original Writ and Warrants of Attorney be duly filed, as is now uſed. Stat. 4 & 5 *Annæ*, *cap.*

How Judgments ſhall be given upon Demurrers.

4 & 5 Ann.

I **Where** any Demurrer is joined, and entred in any Action, in any Court of Record, the Judgment ſhall be given as the Right of the Cauſe and Matter of Law ſhall appear, not regarding any Defect in any Writ, Return, Plaint, Declaration, or other Pleading,

Pleading, except thoſe only which the Party demurring ſhall ſpecially and particularly expreſs and ſet down with his Demurrer, as Cauſes of the ſame, notwithſtanding ſuch Defect might have been heretofore taken to have been Matter of Subſtance, not aided by the Stat. of 27 *Eliz. cap.* 5. ſo as ſufficient Matter may appear to the Court to give Judgment according to the Right of the Cauſe.

According to the Right of the Matter.

Not regarding any Defect, unleſs particularly expreſs'd.

27 Eliz. cap. 5.

A **That** no Advantage or Exception ſhall be taken to or for any immaterial Traverſe, or of or for the Default of entring of Pledges, upon any Bill or Declaration, or other Pleading, or not alledging of the bringing into Court of any Bill, Bond, Indenture, or other Deed mention'd in ſuch Declaration, *&c.* or Letters Teſtamentary, or of Adminiſtration, or of Omiſſions of *Vi & Armis*, or *Contra Pacem*, or for Want of *hoc Paratus eſt verificare*, or *hoc Paratus eſt verificare per Recordum*, or *prout patet per Recordum*; but the Court ſhall give Judgment according to the Right of the Cauſe aforeſaid, without regarding any ſuch Imperfections, Omiſſions and Defects, or any other Matter of the like Nature, unleſs the ſame ſhall be ſpecially and particularly ſet down for Cauſes of Demurrer, 4 & 5 *Annæ*, *cap.* *Note*, This Statute comprehends all that is in the Statute of the 27 *Eliz. cap*, 5. The ſeveral Statutes of *Jeofails*, ſee **Jeofails** in Title **Statutes**,

No Advantages of any immaterial Traverſe, or Want of Pledges, *&c.*

4 & 5 Ann.

B **Actions** *Qui tam*, Informations and Indictments, are excepted out of the Statute of *Jeofails*. 2 *Saund.* 308.

What Actions are excepted out of the Statute.

C **The** Statute of *Jeofails* helps Diſcontinuances in Proceſs, not Diſcontinuances in Pleadings upon a Demurrer. *Carter* 57.

Where Diſcontinuances are not help'd.

D **Altho'** the Statute helps when there is no Original, yet when there is an Original which is ill, that is not aided. *Cro. Jac.* 185. *pl.* 5. 499. *pl.* 3. 480.

It helps where there is no Original, not where is an ill one.

E **No** Bill upon the File is aided after a Verdict, by the Statute of *Jeofails*. *Cro. Car.* 282. *pl.* 24.

No Bill filed is aided after a Verdict.

F **An** ill Plea and Iſſue aided by the Statute of *Jeofails* after a Verdict. *Cro. Car.* 316. *pl.* 9. 317.

An ill Plea and Iſſue aided by Stat. of *Jeofails* after a Verdict.

G **Jeofails** where helped by the Statute. *Carthew* 109, 448.

Jeofails aided.

H **The** Statute of *Jeofails* extends to Inferior Courts. 3 *Salk.* 130.

Inferior Courts.

I **The** Statutes of *Jeofails* extends to Inferior Courts after a Verdict. *Comber.* 260.

After a Verdict.

K **An** inſufficient Return of a *Devaſtavit* is aided by a Verdict. *Salk.* 363.

Inſufficient Return.

L **Note,** After Verdict it may be intended no Damages were given for Matter inſenſible. *Ib.* 129, 369.

What intended.

M **But** it ſhall not be ſo intended for Matter ſenſible, tho' inſufficient in Law. *Ibid.*

What not.

Aſſumpſit.

Jn an *Aſſumpſit* after Verdict, Judgment was arreſted, becauſe the Contract was *nudum pactum*. *Salk.* 364. A

Declaration on Copyhold Lands.

Declaration of Copyhold Lands, without ſaying *ad voluntat Domini*, held well after Verdict, becauſe they were alledged to be Parcel of the Manor. *Salk.* 365. B

Cuſtomary Freeholds.

But in Cuſtomary Freeholds the Eſtate of the Surrenderor muſt be ſhewn. *Ibid.* C

Que Eſtate.

A Termor for Years can't declare on a *Que Eſtate*. *Salk.* 363. D

Verdict.

A Verdict will not aid a bad Title when ſhewn, tho' it need not be ſhewn. *Ibid.* 365. E

But it will aid a Title where defectively ſet forth. *Ibid.* F

Common.

See the Diverſity between Common belonging to the Eſtate, and to the Land. *Salk.* 170, 366. G

Information.

An Information on a Penal Statute by a common Informer not within the Statute of *Jeofails*. *Salk.* 325. H

What are Statutes of *Amendments*, and what of *Jeofails*. *Salk.* 51. I

See more for this Title in *Danvers*, from 352, to 456.

Jetſam.

What it is.

Jetſam is when a Ship is in Danger of ſinking, the Mariners caſt the Goods into the Sea; and tho' ſhe periſheth, yet none of theſe Goods are called Wreck, ſo long as they remain in and upon the Sea; but if they are driven to Land by the Sea, they ſhall be called Wreck. 5 Rep. 106. b. See Title **Wreck.** K

When to be claim'd.

Note, The Proprietor hath a Year and a Day to claim them. L

Imparlance.

Imparlance, See { **Abatement. Declaration. Tender.**

A **Imparlance is when one is to anſwer to the Action of another, he deſireth ſome Time to adviſe what he ſhall anſwer; and it is nothing elſe but the Continuance of the Cauſe till a further Day.**

Imparlance, what it is.

B **If** the Plaintiff do amend his Declaration at any Time after it is deliver'd to the Defendant's Attorney, or after it is filed in the Office, in any Thing that is Matter of Subſtance, the Defendant may, by the Rules of the Court, imparl to the next Term after the Declaration is ſo amended, if the Plaintiff do not pay Coſts to the Defendant for his Amendment; but if the Defendant do accept of Coſts of the Plaintiff, then the Defendant cannot imparl. *Mich.* 22 *Car. B. R.* For by ſuch Amendment it ſhall be accounted as a new Declaration; but if the Defendant do accept of Coſts for ſuch Amendment, it is intended, That he is ſatisfied for what he is prejudiced by the Amendment, and therefore it is Reaſon he ſhould plead to the Declaration ſo amended, and not imparl.

The Defendant may imparl, if the Plaintiff amend his Declaration.

Otherwiſe, if he accepts of Coſts.

C **In** a Suit againſt an Executor, Plea that he had adminiſtred, and traverſe the Executorſhip, is ill, being only in Abatement, and not pleadable after a general Imparlance.

Executor pleads that he had adminiſtred, and traverſes the Executorſhip; ill after a general Imparlance.

D **By** *Glyn* Chief Juſtice, If an Attorney, or Clerk, or other privileged Perſon of this Court, do ſue another, the Defendant cannot imparl, but muſt plead preſently. *Hire* and *Goodwin*, *Mich.* 1656. For it is but reaſonable that the Law ſhould be the ſame, as well for the privileged Perſon as againſt him.

If a privileged Perſon ſue another, the Defendant may not imparl, & *vice verſa*.

If either Party alledge a *Profert in Curia*, the other Party ſhall not be forced to plead nor reply, till he hath ſeen the Deed.

A Alſo in all Caſes where the Plaintiff in his Declaration, or the Defendant in his Plea, alledgeth a *profert in Curia* of the Deed or Adminiſtration, *&c.* there the Defendant ſhall not be forced to plead, nor the Plaintiff to reply, until he hath ſeen the Deed, or other Evidence, and taken a Copy of it at his own Coſts, if he pleaſeth.

If the Plaintiff declares, but proceeds no farther for three Terms, Defendant may imparl.

B If the Plaintiff do declare againſt the Defendant, but doth not proceed farther thereupon for three whole Terms after, the Defendant may imparl to the next Term, by the Rules of the Court. *Hill.* 23 *Car.* *B. R.* For by his Delay he might think the Plaintiff would not proceed, and may be thereby unprovided of a Plea.

If Defendant in Aſſault and Battery be outlaw'd, and comes in upon the Outlawry, he muſt plead preſently.

C By *Glyn* Chief Juſtice, *Trin.* 1656. *B. S.* in the Caſe of *Leonard* and *Osbaſton*, it was ſaid, That if the Defendant in Aſſault and Battery be outlawed, and come in upon the Outlawry, and the Plaintiff declares againſt him, he ſhall not imparl to the next Term, but muſt plead preſently, and go to Trial that Term; for he hath delay'd the Plaintiff too much already by ſtanding out to the Outlawry.

If the Cauſe have proceeded to Iſſue, and Defendant amend his Plea, he ſhall pay the Plaintiff Coſts, but the Court will not grant an Imparlance.

D If the Plaintiff and the Defendant have proceeded ſo far as to Iſſue in the Cauſe, and after the Defendant do amend his Plea, he ſhall pay the Plaintiff Coſts; becauſe by the amending of the Plea after Iſſue, the Plaintiff may be put to extraordinary Charges, in new drawing up the Iſſue; yet the Court will not grant him an Imparlance, tho' the Cauſe be not enter'd in the Judge's Book for Trial, if there be Warning given the Defendant of the Trial. *Per Rolle* Chief Juſtice, 1655, *B. S.* For after Iſſue joined, and Warning given for a Trial upon that Iſſue, it is too late to imparl.

The Court refuſed the Defendant an Imparlance, tho' he was ſued on a Bond of twenty-eight Years old.

E The Court would not grant the Defendant an Imparlance, tho' he was ſued upon a Bond of twenty-eight Years old, and could not ſee the Bond; but bid him pray *Oyer* of it, and plead. In the Caſe of Mr. *Edward Johnſon* of the *Inner-Temple*, *Paſch.* 1656. *B. S.* For the praying *Oyer* is the proper Way to have a Sight of it, as well as a Copy: Till he have *Oyer*, if he pray it, he need not plead; and the Antiquity of the Bond is no Cauſe of Imparlance.

Where an Imparlance to a Declaration upon a Cauſe is removed by *Habeas Corpus*; when to plead to enter.

F If a Cauſe be removed in the Vacation-Time out of *London*, *Middleſex*, or the Marſhal's Court, or other Court within five Miles of *London*, by *Habeas Corpus*, or *Certiorari*, returnable *Immediate*, and Bail be put in; if the Defendant doth not deliver his Declaration eight Days before the End of the Term, then the Defendant may imparl of Courſe; but if it be delivered eight Days before the End of the Term, then the Defendant muſt plead to enter:

And in *Michaelmas* Term, if it be delivered before *Craſtin. Animarum*, or in *Eaſter* Term before *Menſem Paſchæ*, then the Court was not ſatisfied, whether he muſt plead to try it the ſame Term, if the Plaintiff will, as in the Caſe of a *Cepi Corpus*.

Where an Imparlance upon a *Cepi Corpus*.

A When a Declaration upon a *Cepi Corpus* is deliver'd againſt the Defendant in *Hillary* or *Trinity* Terms, wherein the Writ is returnable, (if it be by Bill) or within the next Term following; the Defendant may, by the Rules of the Court, impart to the next Term after the Term wherein ſuch Declaration is deliver'd: But if the Declaration is deliver'd in *Michaelmas* Term, before *Craſtino Animarum*, and in *Eaſter* Term before *Menſem Paſchæ*, the Defendant muſt plead to try the Cauſe, if the Plaintiff will; and when deliver'd after, muſt plead to enter. But if the Defendant doth not appear, but the Bail-Bond is ſued, and afterwards in another Term Bail is put in to the Original Action, and a Declaration is deliver'd forthwith upon that Bail, there the Plaintiff may give Rules to plead preſently; and if he do not plead before the Rules are out, he may ſign Judgment; becauſe the Fault here lies only in the Defendant, againſt whom the Plaintiff could not declare, until he had put in Bail; and he ſhall never take Advantage of his own Laches.

And where not.

Where the Plaintiff ſues out a ſpecial Original, the Defendant ſhall not imparl:

B And where the Plaintiff ſues out a ſpecial Original againſt the Defendant, wherein the Cauſe of Action is mentioned, and the Defendant is taken upon a ſpecial *Capias* upon that Original: Here the Defendant ſhall have no Imparlance, but muſt plead as ſoon as the Rules are out. The Reaſon is this; Where the Writ is general, the Cauſe of Action appears in the Declaration, which the Law allows the Defendant convenient Time to conſider of, and adviſe upon, before he pleads: But when the Defendant is taken upon a Special *Capias*, there the Declaration is mentioned in the Writ itſelf; and the Defendant ſees what the Cauſe of Action is, and may take a Copy of it, and prepare his Anſwer ready againſt the Term, by the Time that the Rules for Pleading are out.

And the Reaſon why.

The Court upon Motion will prolong the Time for Pleading, if there be Occaſion for it.

C Where the Defendant's Caſe requires a ſpecial Plea, and the Matter which is to be pleaded is difficult; the Court will, upon a Motion, grant the Defendant longer Time to put in his Plea than otherwiſe by the Rules of the Court he ought to have: *Hill.* 22 *Car.* 1. *B. R.* But without Motion and Leave of the Court, he cannot have longer Time. Becauſe the Court is to judge whether it be neceſſary to plead ſuch a Plea, as requires longer Time to conſider of than ordinary; and ſhould it be otherwiſe, the Defendant might upon ſuch Pretences delay the Plaintiff without Cauſe.

Where the Plaintiff keeps any Writing from the Defendant, the Court will give him Time to plead till after it is brought in.

D Where the Plaintiff doth keep any Deed or Writing, or other Thing, from the Defendant, which doth belong unto him, and whereby he is to make his Defence, and is diſabled, by the retaining thereof, to plead for his beſt Advantage; the Court will,

upon

upon a Motion, grant an Imparlance to the Defendant, until the Plaintiff do deliver it unto him, or bring it into Court; and alſo a convenient Time after, till he can draw up his Plea. *Hill.* 22 *Car.* 1. *B. R.* For the Law gives every Defendant convenient Time to make his beſt Defence; and in this Caſe, if the Plaintiff be delayed, it ſhall be adjudged his own Fault.

How Judgment to be upon a Plea to the Juriſdiction of the Court after Imparlance.

A **After** a Special Imparlance, upon a *Clauſum fregit,* the Defendant pleads Antient Demeſne, *viz.* That *A.* was ſeiſed in Fee, and the Lands were Antient Demeſne, and ſo would inſinuate that the Freehold would be tried. The Plaintiff demurs, and the Plea held naught. And it was moved, That the Judgment ſhould be final, becauſe he pleaded after an Imparlance: But the Court ſaid, That this was the old Courſe, and a Special Imparlance is but a Novelty, and every Imparlance General or Special ouſts all Pleas to the Juriſdiction of the Court: Whereupon the Court would adviſe what Judgment to give. 5 *W. & M.* See *Cro. Car.* 566.

No Plea can be to the Juriſdiction of the Court after Imparlance.

B **A Plea** to the Juriſdiction of the Court is not receivable after Imparlance. 1 *Lev.* 54. *Raym.* 34.

Non-Tenure is not pleadable after Imparlance.

C **Non-Tenure** in Part, or in the Whole, is not pleadable after Imparlance. 3 *Lev.* 55.

Cannot have *Oyer* after Imparlance.

D **The** Defendant cannot have *Oyer* of a Deed, *&c.* after Imparlance to another Term. 2 *Lev.* 190.

A Tender after Imparlance is naught.

E **A Tender** pleaded after Imparlance is naught: Becauſe the Plea is, That he was always ready to pay, which cannot be when he imparls. *Lutw.* 238.

Defendant may have a Special Imparlance, paying 2 *s.*

F **The** Defendant may, paying 2 *s.* have a Special Imparlance to plead in Abatement.

Tender.

G **After** an Imparlance *Semper paratus* is no Plea. *Carthew* 413.

Information.

H **Where** it ſhall be given to another Term, and where not in an Information brought. *Salk.* 185.

Where to be allow'd.

I **In** what Caſes an Imparlance is to be allowed, and in what not. *Ibid.* 186.

Error.

K **Where** Want of Imparlance is Error. *Comb.* 13.

Quo Warranto.

L **Where** a ſecond Imparlance may be in a *Quo Warranto.* *Ibid.* 12.

To the Juriſdiction.

M **See** a Special Imparlance to a Plea to the Juriſdiction. *Ibid.* 68.

N **Where** the Cauſe is by Original, an Imparlance is given *ex gratia.* *Skinner* 2.

O **The** Practice is now alter'd both in the Courts of *B. R.* and *C. B.* for which *vide* firſt Volume, Titles **Abatement** and **Declaration.**

Impoſſibility.

A A Thing which is impoſſible in Law, is all one with a Thing which is impoſſible in Nature: 21 *Car.* 1. *B. R.* For the Common Law is not contradictory in any Thing to the Law of Nature, but agrees with it in all Tings; and may be ſaid to be the ſame in Effect with it; and ſo ſhould all good Laws be.

A Thing impoſſible in Law is the ſame as a Thing impoſſible in Nature.

Impriſonment, See { **Falſe Impriſonment.**
Priſon and Priſoners. }

Impropriation, or Appropriation.

B Impropriation, or Appropriation, ſignifies a ſevering of a Benefice Eccleſiaſtical, which originally, and in its Nature, is Juris Divini & in patrimonio nullius, to the proper and perpetual Uſe of ſome particular Perſon or Body incorporate. Of theſe there are in England 3845. and they are properly called Impropriations when they are in the Hands of Laymen; and Appropriations when they are in the Hands of a Biſhop, College, or Religious Houſe, tho' ſometimes they are confounded.

Impropriation, what.

C An Impropriation cannot be made but by the Licence of the King, altho' the Pope did formerly uſurp that Authority in this Dominion. *Mich.* 1649. *B. S.* And the King may do it as he hath ſupreme Authority in all Eccleſiaſtical as well as Civil Matters within his Dominions. See the Statute in this Caſe.

An Impropriation cannot be made without the King's Licence.

To make an Appropriation, what Things are neceſſary.

Not only the Licence of the King, but the Conſent of the Dioceſan and Patron, (and Incumbent, if the Church be full) muſt be had to make an Appropriation; but if the Church be not full, then the Dioceſan and Patron may do it. *Plow. Com. Greendon*'s Caſe, 496. *b.* A

What is requiſite to a Licence of Appropriation made in Chancery.

By the Statute of 15 *R.* 2. *cap.* 6. it is enacted, That in every Licence of Appropriation made in Chancery, it ſhould be expreſly contained, that the Dioceſan of the Place ſhould provide a convenient Sum of Money yearly to be paid out of the Fruits, towards the Suſtenance of the Poor of the Pariſh, and that the Vicar ſhould be well endowed. B

To what an Appropriation cannot properly be.

An Appropriation cannot properly be, unleſs to a Spiritual Perſon, *&c.* capable of Cure: But what Corruption hath been therein, ſee *Plow. Com.* 496, 497. *Hob.* 148. C

May be to a Biſhop.

An Appropriation of a Church may be to a Biſhop and his Succeſſors. *Dav.* 80. *b.* D

And to a Dean.

May be to a Dean of a free Chapel of the King. 33 *E.* 3. 103. E

For what Cauſes it ought to be made.

An Appropriation ought not to be made, but *Cauſa Paupertatis*, or ſome other lawful Cauſe. *Conſtitutiones Othoboni. Lyndewode* 51. F

What makes a Diſappropriation.

If the Parſon appropriate, who hath the Right preſents to the Church, and the Preſentee is inſtituted and inducted: This diſappropriates the Church. 44 *E.* 3. 43 *b. Hob.* 152. 3 *Leon.* 180. G

Where Leſſee preſents it is only for his Time.

If a Leſſee for Years of an Appropriation preſents, this ſhall not bind him in the Reverſion. 44 *E.* 3. 43. H

A Vicarage ought to be endowed upon an Appropriation.

4 *H.* 4. *cap.* 13.
See 15 *R.* 2. *cap.* 6.

There ought to be an Indowment of a Vicarage upon all Appropriations. See *Cro. Jac.* 252. *pl.* 6. And a ſecular Perſon muſt be ordain'd Vicar perpetual, canonically inſtituted and inducted thereunto, and indowed by the Diſcretion of the Ordinary to do Divine Service; and that no Religious be made Vicar in any ſuch Church. I

Indenture.

See **Deed.**

A AN Indenture is a Writing that contains some Contract or Agreement between two or more Persons, indented on the Top, and answering to another Copy, called the Counterpart, which comprehends the same Covenants, and Articles to be kept by the other Party.

Indenture, what.

B In an Indenture, the Words, tho' they are the Words of the Lessee only, or the Lessor only, yet they are the Words of both Parties. *Cro. Eliz.* 202. *pl.* 31. and shall bind both Parties, and be taken as the Agreement of each Party. *Cro. Eliz.* 637. *pl.* 1.

The Words in an Indenture are the Words of both Parties, and are taken to be the Agreement of both Parties.

C An Indenture *hic in Cur' prolat'* was pleaded, and in Truth it was not an Indenture but a Deed-Poll; but it was written *This Indenture*; and because the Deed was not indented, Judgment was given for the Plaintiff. *Cro. Eliz.* 472. *pl.* 26.

Tho' a Deed begins *This Indenture*, yet if it be not indented, it cannot be pleaded as an Indenture.

D If a Man pleads by Virtue of an Indenture which is lost, and Affidavit is made thereof, the Court will compel the Plaintiff to shew the Counterpart, that he may plead thereto, or else will grant an Imparlance. *Cro. Jac.* 429. *pl.* 5.

Upon Oath that the Indenture is lost, the Court will make the Plaintiff produce his Counterpart, or grant an Imparlance.

E So also if he will swear he never had a Counterpart. *Cro. Jac.* 429. *pl.* 5.

So also, if he will swear he never had a Counterpart.

Indictment.

Indictment.

Indictment, See { Counſel and Counſellors.
Felony.
Forcible Entry.
Inquiſition.
Libel.

An Indictment, what.

AN Indictment is an Inquiſition taken and made by twelve Men, at the leaſt, thereunto ſworn, whereby they do find and preſent, That ſuch a Perſon, of ſuch a Place, in ſuch a County, of ſuch a Degree, hath committed ſuch a Treaſon, Murder, Burglary, Robbery, Felony, Treſpaſs, or other Offence, againſt the Peace of the King, his Crown and Dignity, &c. Pulton 169. b. A

It ought to be more certain than Pleading in Law.

An Indictment ought to be more certain than Common Pleadings in Law need to be: *Hill.* 23 *Car. B. R.* Becauſe they are more Penal, and ought to be more preciſely anſwered unto. B

Muſt expreſs the Year when taken.

An Indictment ought to expreſs the Year of our Lord in which it was taken; *Hill.* 1649. 30 *Jan. B. S.* for it ought to be certain in the Time, as well as in other Matters. C

If too general or incertain it may be quaſhed.

If an Indictment be drawn ſo general, and ſo uncertain, that the Party indicted cannot tell how to make a certain Anſwer unto it, ſuch an Indictment is not good, but may be quaſhed. *Paſch.* 24 *Car. B. R.* for otherwiſe the Defendant would be inſnared thereby. D

Tho' Matter of Form be omitted, yet the Indictment is good: But *contra* of Matter of Subſtance.

If a Word be left out in an Indictment which is but only in Matter of Form, yet the Indictment is good; but if it be in Matter of Subſtance it is not good. *Trin.* 24 *Car. B. R.* for it is the Subſtance of Pleadings that is moſt regarded, tho' Formality be not to be neglected. E

A If one be indicted for doing of any Thing, which he is not by the Law to be indicted for, as for the encloſing of a Common, or ſome other Treſpaſs for which an Action at the Common Law is to be brought, or for calling a Man a Rogue or Thief, *&c.* Such an Indictment is not good, but may be quaſhed: *Paſch.* 24 *Car. B. R.* for Indictments are to be preferred for Criminal, and not for Civil Matters; and then likewiſe the Delinquent is liable to be twice puniſhed for one Offence, which is againſt *Magna Charta.*

Indictment for a Thing not indictable by Law, may be quaſhed.

B If one do interrupt a long continued Poſſeſſion of Lands by an unlawful Means, and the Perſon that is ſo interrupted of his Poſſeſſion do regain his Poſſeſſion by unlawful Means alſo, yet an Indictment of Forcible Entry doth not lie againſt him for doing thereof: *Mich.* 24 *Car. B. R.* for the Law favours long Poſſeſſions, and doth not countenance the Diſturbers of them; and this is but *vim vi repellere*, which is not puniſhable in many Caſes.

Where an Indictment of Forcible Entry doth not lie for Interruption of a long continued Poſſeſſion.

C If an Indictment be good in Part, and the other Part of it is naught, the Court will not quaſh it. *Willowe's* Caſe, in *Latch.* 173.

The Court will not quaſh an Indictment good in Part and naught in Part.

D If one be indicted at the Seſſions in *London*, or in any other County, and the Party indicted doth remove the Indictment by a *Certiorari* into this Court, and doth not thereupon quaſh the Indictment, the Party that did remove it, ought by the Rules of the Court to try the Indictment at his own Coſts the next Term after that the Indictment is removed; for the removing of it is in Favour of the Defendant, and he ſhall not by Reaſon thereof be ſuffered to delay, or put the Proſecutor thereby to extraordinary Charges, 13 *Nov.* 1650.

If an Indictment be removed and not quaſh'd, the Party who removed it muſt try it at his own Coſts.

E An Indictment muſt be certain, that the Party indicted may know how to plead to it, or traverſe, or elſe it is not good, but may be quaſh'd. *Hill.* 21 *Car. B. R.* becauſe there can be no Trial upon it by reaſon of its Uncertainty.

Why an Indictment muſt be certain.

F When an Indictment is Special, that is, when it is grounded upon ſome Special Matter of Fact; the Evidence given upon the Trial of this Indictment muſt prove this Special Matter, and maintain the Indictment; but if it be a general Indictment it is not ſo. 22 *Car. B. R.*

Special Indictment muſt be proved ſpecially.

G The Court will not quaſh an Indictment that is preferred for the publick Good, altho' it be not a good Indictment, but will put the Party indicted to traverſe it, or to plead unto it: *Mich.* 22 *Car. B. R.* for it is by the Favour of the Court that an Indictment is quaſh'd; for if the Court pleaſe, they may force the Party to traverſe or plead to an Indictment, be it good or bad, for it is no Prejudice to the Party indicted.

The Court will not quaſh an Indictment preferred for the publick Good, but will oblige the Party to traverſe, or plead.

Indictments for Perjury, or Nuſances not uſually quaſh'd, though Faulty.

A The Court doth not uſually quaſh Indictments for Perjury or Nuſances in the High-way, *&c.* although the Indictments be faulty, but will put the Party to plead to the Indictment. *Hill.* 23 *Car. B. R.* for Perjury and Nuſances are counted great Offences, and therefore the Court doth not favour ſuch Offenders, and if the Indictments be not good, the Parties indicted may avoid them by pleading, and it is but *ex Gratia* that the Court doth quaſh Indictments, and they are not bound to do it *ex Officio*.

The Court will not quaſh an erroneous Indictment if the Party be outlawed upon it.

B Where the Party indicted is outlawed upon the Indictment, the Court will not quaſh the Indictment, altho' it be erroneous, but will force the Party outlawed to bring his Writ of Error to reverſe the Outlawry; for before the Outlawry reverſed, the Party outlawed can have no Benefit of the Law. *Mich.* 24 *Car. B. R.*

It may be amended the ſame Term it is brought into Court, but not after.

C An Indictment may be amended the ſame Term it is brought into the Court, by the Clerk of the Peace; but the next Term after he cannot amend it, *Paſch.* 24 *Car. B. R.* for tho' the Law will give Way as much as is requiſite for the Maintaining of Indictments, becauſe it is intended they are preferred *pro bono publico*, yet it will not permit that the Party indicted ſhall be unneceſſarily delayed by the Proſecutor from coming to a juſt Vindication of himſelf for the Crime for which he ſtands indicted.

Omiſſion of Words of Form only ſhall not vitiate an Indictment; but Words of Subſtance will.

D If only a Word of Form be left out in an Indictment, yet the Indictment is good; but if one Word of Subſtance be omitted, the whole Indictment is naught, *Paſch.* 24 *Car. B. R.* for tho' the Law doth regard Form in the Proceedings thereof, yet it is Matter of Subſtance that is chiefly aimed at in all Proceedings.

Indictment lies for Perjury in an Affidavit made in any Court of Record.

E If any one be perjured in an Affidavit made in any Court of Record, touching any Cauſe depending in that Court, an Indictment may be preferred againſt him; for this is Perjury upon the Statute of 5 *Eliz. cap.* 29. *Trin.* 23. *Car. B. R.*

Indictment of Forcible Entry lies not for entring into a Leaſe for Years, or a Copyhold.

F An Indictment of Forcible Entry doth not lie upon the Statute of 8 *H.* 6. againſt one for entring forcibly into a Leaſe for Years, or a Copyhold; for ſuch Eſtates are not mention'd in the Statute of 8 *H.* 6. nor within the Equity of that Statute; but an Indictment doth lie in ſuch a Caſe, by the Statute of 21 *Jac. c.* 15. *Hill.* 23 *Car. B. R.* for they are compriſed within that Statute.

The Court will not fine a Man convicted on an Indictment till he appears in Court.

G Where a Perſon is convicted upon an Indictment or Information, the Court will not ſet the Fine until the Party appears in Court, or elſe ſome other Perſon in Court undertakes for him to pay his Fine; becauſe the Court immediately, upon pronouncing of Judgment againſt the Defendant, commits him in Execution.

A **A Preſentment** may be in *Engliſh*, but an Indictment ought to be in *Latin*, or elſe it is not good, but may be quaſh'd, except it be an Indictment taken before the Commiſſioners of Sewers, which may be in *Engliſh*. *Hill.* 21 *Car. B. R.*

It muſt be in *Latin* or may be quaſh'd, except taken before Commiſſioners of Sewers.

B **An** Indictment doth lie againſt one that ſpeaketh blaſphemous Words, 21 *Car. B. R.* It lay then at the Common Law, but now by a late Act it lies only for ſpeaking of ſome blaſphemous Words named in that Act; but *Quære*, Whether it now lies at the Common Law for ſpeaking any other blaſphemous Words not mentioned in the Statute? It ſeems it doth not.

It lies for ſpeaking blaſphemous Words.

C **An** Indictment for a Nuſance doth lie againſt the Owner or Proprietor of a Ship that is ſunk in a Haven or Port, 21 *Car. B. R.* for thereby the Trade of that Place, where the Haven or that Port is, is hindred, and alſo Navigation, which is prejudicial to the Commonwealth; for it is chiefly maintained by Navigation.

For ſinking a Ship in a Haven.

D **One** that is convicted upon an erroneous Indictment cannot move after his Conviction to have the Indictment quaſh'd, but muſt bring his Writ of Error to reverſe the Judgment given againſt him upon the Indictment. *Mich.* 22 *Car. B. R.* for after Judgment it is too late; for an Indictment is quaſhed for the Inſufficiency in it, or becauſe no good Judgment can be given upon an erroneous Indictment; but if Judgment be given upon an erroneous Indictment, it is good, 'till it be reverſed by a Writ of Error.

Cannot be quaſh'd after Conviction, tho' erroneous; but the Party is put to his Writ of Error.

E **An** Indictment, removed by a Writ of *Certiorari* into this Court, may be ſent back again into the County or Place whence it was removed, if there be Cauſe to do it. *Mich* 22 *Car. B. R.* that there may be a Trial had upon it where it was firſt laid.

If remov'd into *B. R.* by *Certiorari*, yet it may be ſent back.

F **If** an Action upon the Caſe be brought againſt one for calling another Thief, and the Defendant doth juſtify the Words, and upon the Trial it be found for the Defendant, an Indictment may be forthwith framed againſt the Plaintiff, to try him for the Felony: So it was done in *Mich.* 21 *Car.* in the Caſe of one *Perry*, who was after executed at *Tyburn*, *Mich.* 22 *Car. B. R.* for the Felony appears to the Court by the Verdict found for the Defendant.

Caſe brought for calling a Man Thief; if found for the Defendant, the Plaintiff may be indicted for the Felony.

G **An** Indictment doth lie againſt one that cheats another at Play with falſe Dice: *Hill.* 22 *Car. B. R.* or for any other Way of cheating at Play, or otherwiſe; for Cheating is a high Crime againſt the Commonwealth, as well as againſt the Party cheated.

It lies for cheating at Play.

H **An** Indictment doth not lie for a private Nuſance, or other Injuries, becauſe the Nuſance or Injury done is not made *ad commune nocumentum*, but *ad privatum*; and therefore an Action upon the Caſe doth only lie for the Party

But not for a private Nuſance.

that is damnified by this Nuſance or Injury, *Hill.* 22 *Car. B. R.* 11 *Maii,* 1651. for Indictments are to puniſh publick Offences only, and thoſe done againſt the publick Peace, and not to puniſh private Treſpaſſes, for which the Law gives particular Actions.

It lies for ſtopping a Man in the Highway.

An Indictment lies againſt one for aſſaulting and ſtopping of another in his paſſing in the Highway: *Hill.* 22 *Car. B. R.* for it is a Breach of the publick Peace. A

Counſel may be aſſign'd to ſpeak for a Man indicted for Felony.

One that is indicted for Felony may have Counſel aſſigned him to ſpeak for him: *Paſch.* 23 *Car. B. R.* but ſuch Counſel are only to ſpeak for him in Matter of Law, and not concerning Matters of Fact, for that doth depend upon Proof of Witneſſes. B

Grand Jury not bound to find a Bill, tho' preferred upon Oath: And tho' it be without Oath, they may, if they ſee Cauſe.

Altho' a Bill of Indictment be preferred to a Grand Jury upon Oath, yet they are not bound to find the Bill, if they find Cauſe to the contrary; and on the other Side, altho' a Bill of Indictment be preferred unto them without Oath made, yet they may find the Bill if they ſee Cauſe: *Paſch.* 23 *Car. B. R.* but it is not uſual to prefer a Bill unto them before Oath be firſt made in Court, that the Evidence they are to give unto the Grand Inqueſt to prove the Bill, is true. C

Indictments ought to be for Offences at Common Law, or againſt ſome Statute.

Every Indictment ought to be preferred againſt the Party for ſome Offence committed by him either againſt the Common Law, or againſt ſome Statute; *Trin.* 23 *Car. B. R.* and not for every ſlight Miſdemeanor. D

It lies for a falſe Oath in an Anſwer in Chancery.

An Indictment lies againſt one that makes a falſe Oath in an Anſwer to a Bill in Chancery, or in an Affidavit made in a Cauſe depending there, or in any other Court of Record. *Trin* 23 *Car. B. R.* E

How to proceed upon an Indictment in the King's Bench.

Upon an Indictment preferred againſt one in the King's Bench, there doth iſſue out a *Venire facias*; and if the Party doth not appear thereupon, then an Attachment againſt the Party indicted to force him to appear to the Indictment; *Paſch.* 1650. *B. S.* and to traverſe or plead to it, or to move to have it quaſhed. F

In certifying an Indictment, it muſt appear that the Jury were ſworn.

It ought to appear in certifying an Indictment, that the Jury were ſworn or charged to preſent Offences within the Place where the Offence is laid, 1 *Saund.* 249. G

If founded on a Statute, it muſt conclude *contra formam Statuti.*

An Indictment founded only upon a Statute, ought to conclude *contra forman Statuti.* *Ibid.* 250. H

A **Upon** an Indictment for ſtopping a Way, it was declared to be the Courſe of the Court, that the Offender is to be admitted unto a Fine upon his Submiſſion before Verdict, if there be a Certificate that the Way is repaired. But if the Party be convicted, ſuch Certificate ſhall not ſerve; but the Party ought to cauſe a *Conſtat* to iſſue out to the Sheriff, who ought to return that the Way is repaired, becauſe the Verdict, which is a Record, ought to be anſwered with Matter of Record. *Raym.* 215.

For ſtopping a Way, the Offender ſhall be admitted to a Fine, upon his Submiſſion before Verdict, if the Way be certified to be repaired; but after Conviction ſuch Certificate will not avail.

B **An** Indictment lies for the conſpiring to do an illegal Act, altho' the Act is not done, 1 *Lev.* 62, 125. And it lies againſt the Procurers, altho' the Actors are acquitted. *Idem* 126.

It lies for conſpiring to do an illegal Act, tho' it be not done.

C **An** Indictment at the Seſſions of Peace, omitting *Domini Regis*, is ill. *Idem* 175.

Domini Regis omitted, ill.

D **An** Indictment *Quod cepit quoſdam Piſces*, J. S. *vocat.* Carp-Fiſhes, without Mark or Value, good. *Id.* 203.

Quod cepit quoſdam Piſces, &c. without Mark or Value, good.

E **An** Indictment that the Defendant *eſt communis perturbator pacis, communis oppreſſor, &c.* ill; but *communis Barectator, rixa, &c.* good. *Id.* 299.

Communis perturbator Pacis, &c. ill; but *Communis Barectator, &c.* good.

F **An** Indictment before a Juſtice of Peace, *infra Burgum*, and ſays not *pro Burgo*, is ill. *Id.* 304.

Before a Juſtice *infra Burgum*, and not *pro Burgo*, ill.

G **That** *ſcienter recepit latrones*, or Felons, without ſaying that he knew them to be Thieves, good. 2 *Lev.* 208.

Scienter recepit latrones good, without ſaying that he knew them to be Thieves.

H **An** Indictment *Quod fecit & fabricavit vel fieri & fabricari cauſavit*, held void for Uncertainty. 5 *Mod.* 137, 138.

Fabricavit vel fabricari cauſavit void for Uncertainty.

I **Indictments** ought to be preciſe and certain in every Point, and ſhall not be taken by Intendment. *Cro. Jac.* 19, 20.

Indictments ought to be certain, and not taken by Intendment.

K **If** a Perſon be outlawed upon an Indictment, and there be not any Addition, the Party may avoid it for want of Addition, or by Exception thereto upon his Appearance; but when he appears and pleads to Iſſue, he admits it. *Cro. Jac.* 610.

If a Perſon be outlawed upon an Indictment, and there be no Addition, how it may be avoided.

L **Upon** an Indictment for a Forcible Entry, it was moved, 1. That it was not ſet forth, that the Inquiſition was taken before *A.* and *B. Juſtic. ad pacem, &c. necnon ad diverſas felonias, &c. Curia.* Upon this Statute Juſtices of the Peace only have Power.

Upon a Forcible Entry: *Juſtic.* and ſays not *ad audiend. &c.* yet good.

M 2. **The** Entry is *in unum Meſſuagium ſive domum*, and well enough; for a Meſſuage and a Houſe are both the ſame: But *in unum Meſſuagium ſive Tenementum* is naught.

In unum Meſſuagium ſive domum, and good.

N 3. **He** ſays that he was *ſeiſitus ſive poſſeſſionatus*, and well enough; becauſe it is of a Meſſuage or Houſe, *exiſtens liberum Tenementum*, which proves that he was ſeized of ſuch Eſtate whereof he might be diſſeiſed. *Cro. Jac.* 633. *pl.* 6.

Seiſitus ſive poſſeſſionatus, well enough.

How Indictments upon Statutes ought to be, and how to conclude.

A **Where** an Indictment is drawn upon a Statute, it ought to purſue the Words of the Statute if it be a private Act, *Aliter* if it be a general Act; and it is ſafe to conclude *contra formam Statut'* generally, without ſaying *Statuti*, or *Statutorum*: For if it happens to be upon one Statute, it is then right; ſo alſo if it be upon two or more Statutes.

Clerk of Aſſize to take but 2 *s.* for an Indictment.
The Penalty.
10 & 11 W. 3. cap. 23. Sect. 7 & 8.

B **If** any Clerk of Aſſize, Clerk of the Peace, or other Perſon whatſoever, ſhall demand or take more than 2 *s.* for drawing of any Bill of Indictment againſt a Felon, he ſhall forfeit 5 *l.* and Coſts of Suit, *per Stat.* 10 & 11 *W.* 3. *cap.* 23. *Sect.* 7 & 8.

If any defective Bill.
The Penalty.
10 & 11 W. 3. cap. 23.

C **That** if any Clerk of the Aſſize, Clerk of the Peace, Clerk of the Crown, Clerk of the Indictments, or other proper Officer, or their Clerks or Deputies, ſhall draw any Bill defective, they ſhall draw new Bills without Fee, or forfeit 5 *l.* with Coſts. *Stat.* 10 & 11 *W.* 3. *cap.* 23.

Quaſh'd for want of *proborum & legalium hominum.*

D **An** Indictment before the Coroner was quaſh'd, becauſe it was ſaid *per Sacram, A. B. &c.* and doth not ſay *proborum & legalium hominum. Cro. El.* 635. *pl.* 2.

For a Forcible Entry quaſh'd, for want of the Word *adhuc*.

E **An** Indictment upon a Forcible Entry quaſh'd, becauſe it was not *adhuc exiſten' liber' tenement'*, but only *exiſten' liber' tenement'*, without *adbuc*. *Cr. Ja.* 639. *p.* 2.

For erecting of a Nuſance in the Highway quaſh'd, for want of *Vi & armis.*

F **An** Indictment for erecting a Barn in the Highway was quaſh'd, for want of *Vi & Armis. Cro. Car.* 584. *pl.* 2.

The Court will not oftentimes quaſh an Indictment, but order Defendants to plead or demur.

G **Altho'** Exceptions be taken againſt an Indictment, to the Intent that the Court ſhould quaſh it, yet the Court will grant Time to the King's Counſel to maintain the Indictment, if they deſire it; and do oftentimes order them to appear and plead, or demur to it as they ſhall think fit; for the Maintenance of Indictments is for the Good of the Nation, and the King is principally concerned in it.

Not quaſh'd for Extortion.

H **Note,** It is againſt the Courſe of the Court to quaſh an Indictment for Extortion. 5 *Mod.* 13.

How Indictments ought to expreſs a mortal Wound given.

I **An** Indictment that ſays, *Quod dedit unam Plagam mortalem circiter Pectus*, is inſufficient and incertain, for it may be in the Arm or Belly; and an Indictment ought certainly to expreſs in what Part the mortal Wound is, and the Profundity and Latitude of it, that it may appear to the Court to be mortal. 4 *Rep.* 40. *b.*

Indictment of Murder wanted the Word *Percuſſit.*

K **An** Indictment of Murder, with ſix ſeveral Objections to it, and all over-ruled but one, which was want of the Word *Percuſſit*, with the ſhooting of a Bullet out of a Gun thro' the Body of the Deceas'd. 5 *Rep.* 120. to 123.

Where there are ſome ſuperfluous Words in an Indictment of Murder.

L **An** Indictment ſet forth, That *Percuſſit in ſiniſtra parte Ventris circa Umbilicum*; and the Words *Circa Umbilicum* were held ſuperfluous, and the other Words good. 4 *Rep.* 41.

A **An** Indictment ſhall not be overthrown for falſe *Latin*, if by any Intendment it can be good. *Cro. Eliz.* 108. *pl.* 3.

Shall not be quaſh'd for falſe *Latin*.

B **See** ſeveral Exceptions to an Indictment, upon an Inquiſition taken before the Coroner for a Murder, with the Anſwers thereunto. 4 *Rep.* 41, 42.

Several Exceptions to an Indictment on the Coroner's Inqueſt.

C **Where** there is a Principal and Acceſſory, and the Principal is pardoned, or hath his Clergy before Judgment, the Acceſſory cannot be arraigned, 4 *Rep.* 43. *b.* For it doth not appear by Judgment of the Law that he was Principal; and the Acceptance of the Pardon, or Prayer of the Clergy, is an Argument, but no Judgment in Law, that he is guilty: But if the Principal be pardoned after the Attainder, or hath his Clergy allowed, there the Acceſſory ſhall be arraigned, becauſe it appears judicially that he was Principal. 4 *Rep.* 43. *b.* 44. *a.*

In what Caſes the Acceſſory cannot be arraigned.

How it is where the Principal is pardoned, or hath his Clergy.

D **If** upon an inſufficient Indictment of Felony, there is a Judgment that the Party *Suſpendatur per Collum*, and is ſo attainted, which is the Judgment and End that the Law hath appointed for the Felony; there he cannot be *auterfoits* indicted and arraign'd, until this Judgment be revers'd by Error: But when the Offender is diſcharged upon an inſufficient Indictment, there he may; the Law having not had its End, nor was the Life of the Party ever put in Jeopardy. 4 *Rep.* 45. *a.*

Where the Party may be indicted again, when the firſt was inſufficient.

E **An** Indictment was againſt a Sheriff's Bailiff, for taking *extorſive colore officii* 20 *s.* he was found guilty, and fined 40 *l.* *Cro. Car.* 438. *pl.* 448. But for ſome Defect in the Judgment it was revers'd.

A Sheriff's Bailiff fined for Extortion. See 23 H. 6. cap. 10.

F **An** Indictment at the Seſſions, upon the Statute of 8 *H.* 6. *c.* 9. was quaſh'd for miſrecital of the Statute; and alſo for ſaying, That the Seſſions was held *Dies Martis, & Die Mercurii, &c.* For the Record ought to mention the Seſſions to be held at a Day certain, *viz.* the firſt Day thereof, *&c.* 4 *Rep.* 48. *a.*

An Indictment quaſhed for miſreciting of a Stat. of 8 H. 6. cap. 9.

The Seſſions muſt be ſaid to be held at a Day certain.

G **Note,** It is not Policy to recite a Publick Statute, for the Recital is not neceſſary, and the Miſrecital is fatal; and therefore the ſure Way is only to ſay, *Contra formam Statuti, &c.* 4 *Rep.* 48.

No Policy to recite a Publick Statute.

H **In** all Caſes, the Indictment for a Fact done, ought to be laid in the County where the Fact was done; for it ſhall be intended, That the beſt Conuzance of the Fact may be had there, and conſequently the faireſt Trial.

Ought always to be laid in the County where the Fact was done.

I **The** Pariſh in which the Fact was done for which the Party is indicted, and the Place of the Defendant's Abode ought to be named in the Indictment, that the Party indicted may be the plainlier deſcribed and outlawed if he do not appear. See *antea*.

The Pariſh and Place of the Defendant's Abode ought to be nam'd.

The Caption may be amended the ſame Term, not afterwards.

A **The** Caption of an Indictment may be amended the ſame Term it is brought into Court, by the Clerk of the Peace; but the next Term after it cannot be amended.

The want of *Vi & armis* is fatal.

B **The** want of *Vi & armis* in an Indictment of Forgery is fatal. 2 *Lev.* 221.

The want of the Words *Ligeantiæ ſuæ* fatal.

C **A Judgment** of High Treaſon was revers'd, for want of the Words *Ligeantiæ ſuæ* in the Indictment. 3 *Lev.* 396.

What Proceſs iſſues out upon Indictments.

D **Upon** an Indictment preferr'd againſt one in the King's Bench in *Middleſex*, there doth iſſue out a *Venire facias*; and if the Party doth not appear thereupon, then a *Capias*, to force him to appear to the Indictment.

One poiſoned inſtead of another, it is Murder.

E **Ratsbane** was bought by the Huſband to poiſon the Wife, with which the Child was poiſoned, and the Wife recovered; this is Murder, tho' there was no Intention to murder the Child. 2 *Plow.* 473, to 476.

Where a Statute appoints a Proſecution to be by Bill, Plaint, or Information, it can't be by Indictment.

F **Where** a Statute appoints a Penalty to be recovered by Bill, Plaint, or Information, it can't be by Indictment; for when a Penalty is appointed for the doing of a Thing which was no Offence before, and appoints how it ſhall be recover'd, it ſhall be puniſh'd by that Means, not by Indictment. *Cro. Jac.* 643, 644.

A Fiſhmonger indicted for ingroſſing of Fiſh.
2 Ed. 6. cap.
What Ingroſſing and Regrating is.

G **A Fiſhmonger** in *London* was indicted for ingroſſing ſeveral Quantities of Fiſh, and found guilty: And what Ingroſſing and Regrating is, ſee the Stat. and *Cro. Car.* 314. *pl.* 6. 315.

The Puniſhment for ſtriking in the Palace of *Weſtminſter* near the Hall, the Courts ſitting.

H **One** was indicted for Striking in the Palace of *Weſtminſter* near the Great Hall, the Courts all ſitting there, and being found guilty was fined 1000 *l.* and impriſon'd during the King's Pleaſure, and to make his Submiſſion in all the Courts, and be bound with Sureties for his Good Behaviour. *Cro. Car.* 373. *pl.* 8. 374.

One found guilty of Felony for burning of his Houſe, was only fined and pillory'd.

I **A Man** was found guilty of Felony for burning of his Houſe in *London*; but there being three Judges againſt one, that it was not Felony, but an exorbitant Crime, he was fined 500 *l.* and to ſtand upon the Pillory, and be bound to his Good Behaviour during Life. *Cro. Car.* 377. *pl.* 4. 378.

Indictments and Informations naught, without the Word *Voluntarie*.
21 H. 8. cap. 13.

K **Judgment** ſtay'd upon a Verdict upon an Information upon 21 *H.* 8. *cap.* 13. for Non-Reſidence, for want of the Word, *Voluntarie* abſented. *Cro. Eliz.* 100. *pl.* 4.

A *Voluntarie* left out of an Indictment of Perjury, and quaſh'd. *Cro. Eliz.* 137. *pl.* 7. 147. *pl.* 11. 201. *pl.* 30.

In an Indictment of Perjury.

B **Refuſal** of the Oath of Supremacy incurs a *Præmunire* upon 3 *Jac. cap.* 4. after Tender by a Juſtice of a Gaol-Delivery, tho' never tender'd by the Biſhop; and tho' in the Indictment the Tender did not appear to have been *per* Juſtice of Peace, *&c.* as requiſite by Statute, yet it appearing in the *Placita*, it is good. *Skinner* 11.

Recuſancy.

C **Indictment** upon the Statute not ſtrictly purſuing the Words of it, but omitting ſome Part, yet good. *Ibid.*

Upon a Statute.

D **Indictment** for woading Cloths but to the third Stall, and a Cuſtom laid for forty Years and more, that Dyers uſed to woad their Cloth to the fourth Stall; this no Deceit to the Publick. *Skinner* 109.

Againſt Dyers.

E **The** Omiſſion of *Vi & armis* in Indictments was ſo material, that before the Statute of 37 *Hen.* 8. an Indictment ought to be quaſh'd for it. *Ibid.* 426.

Vi & armis.

F **See** of an Indictment upon the Statute for erecting a Cottage, and ſeveral Exceptions to it. *Ibid.* 564.

Erecting a Cottage.

G **Indictment** for aſſaulting a Duke's eldeſt Son, ſtiling him by his Father's ſecond Title, as in Common Parlance, is ill. 3 *Salk.* 451.

For an Aſſault of the eldeſt Son of a Duke.

H **See** ſeveral Indictments quaſh'd for falſe *Latin.* *Salk.* 370, 371.

Of Indictments quaſh'd.

I **So** when the Charge is in the Disjunctive, as for making, or cauſing to be made. *Ibid.* 342, 371.

Disjunctive.

K **And** the Charge in Indictments, Informations, *&c.* muſt be expreſs, not augmentative, *&c.* *Salk.* 375, 631. 3 *Salk.* 39, 42, 186, 188.

To be poſitive.

L **As** an Indictment for indorſing Exchequer Bills, as if received for Cuſtoms, Judgment was arreſted. *Salk.* 375.

M **So** two Indictments were quaſh'd, becauſe the Charge was laid only with a *Quod cum*, or Recital. *Salk.* 371.

N **An** Indictment lies for not receiving, turning off, or not providing for a poor Apprentice. *Ibid.* 381.

Where it lies.

O **But** an Indictment lies not for inticing an Apprentice from his Maſter. *Ibid.* 380.

Where not.

P **An** Indictment may be at a Borough Seſſions on 5 *Eliz.* for exerciſing a Trade not ſerving as an Apprentice. *Ibid.* 370.

For uſing a Trade.

Q **But** two Perſons can't be jointly indicted thereon for exerciſing a Trade, *&c.* *Ibid.* 382. *Comber.* 61. *contra* for Extortion. *Ibid.*

Where two Perſons not to be joined.

5 Eliz. cap. 4.

See the Judges Opinion in the Caſe of Informations on the ſaid Statute. 5 *Eliz. cap.* 4. *Salk.* 373. A

Bawdy-houſe.

Adultery.

Indictment may be for keeping a Bawdy-houſe, but not for being *Communis Lena*, 383. Alſo no Indictment lies for Adultery at Common Law. *Salk.* 552. B

Againſt Huſband and Wife.

Indictment well lies againſt the Huſband and Wife for keeping a Bawdy-houſe. *Ibid.* 384. C

A Cheat.

A Cheat is not indictable unleſs he comes with falſe Tokens. *Ibid.* 379. D

Againſt Officers.

A Conſtable, or other Officer, is indictable for neglecting a Duty required by the Common or Statute Law. *Ibid.* 380. E

When it is an Indictment.

An Indictment is only *Billa* before the finding, and after finding *Indictamentum*. *Ibid.* 376. F

When an Indictment is good.

If an Offence be ſufficient to maintain the Charge, and be well laid, 'tis ſufficient, tho' the other Facts be ill laid. *Ibid.* 385. G

Aſſault.

As *Verberaverunt*, *Vulneraverunt*, *&c.* is good without *Inſultum fecit*, becauſe Battery implies an Aſſault. *Ibid.* 384. H

Contra formam Statuti.

Indictment for Preaching not being licens'd quaſh'd, becauſe not *ſed contra formam Stat'*. *Ib.* 370. I

When not be quaſh'd on Motion.

Indictments for any heinous Offences, and Informations filed by the Attorney-General, not to be quaſh'd on Motion. *Ibid.* 372. K

Perjury.

A Motion was made for an Information of Perjury and denied, for *per Cur'* you may indict him. *Ibid.* 374. L

Two Indictments for one Fact.

Where two Indictments are for the ſame Fact, it is proper to try on both at once. *Ibid.* 382. M

Recognizance.

When a Recognizance for an Indictment on Removal is forfeited or not. *Ibid.* 370. N

When Indictments not quaſh'd.

There can be no Motion to quaſh an Indictment removed by *Certiorari* after the Recognizance forfeited. *Ibid.* 380. O

Where Security to be.

Where the Defendant ſhall give Security to try it on a Removal by the Proſecutor. *Ibid.* 692. P

Plea-Roll.

An Indictment try'd in *B. R.* is enter'd on the Plea-Roll; but if at the *Old Bailey*, 'tis put in a Bag, *&c.* *Ibid.* 371. Q

Evidence.

An Indictment for breaking the Chamber of *S.* in the Houſe of *James*; Evidence it was the Houſe of *James*, and ill. *Ibid.* 385. R

Information.

Where a Matter concerns the publick Government, and no particular Perſon entitled to an Action, an Information will lie. *Ibid.* 374. S

A **An** Information may be for a falſe Return of a *Mandamus*, but not for Perjury. *Salk.* 374.

The like.

B **No** Proceſs can iſſue on Informations before a Recognizance given by the Informer. *Ibid.* 376.

When Proceſs to iſſue.

C **Information**, or Popular Action, on Penal Statutes made before 21 *Jac.* 1. *cap.* 4. can't be brought into *B. R.* unleſs for Facts done in the County where the Court ſits.

Where Informations to be brought.

D **Also** Debt lies not in *B. R.* on any Penal Statute made before 21 *Jac.* 1. *ſecus*, of Penal Acts made ſince. *Salk.* 373.

E **One** outlawed by Proceſs on an Information, if he comes in and reverſes the Outlawry, he muſt plead *inſtanter* to the Information. *Ibid.* 371.

When to plead *inſtanter.*

F **See** an Information in the Nature of a *Quo Warranto*, where they admitted Perſons not Inhabitants to be Freemen. *Ibid.* 374.

Informations in the Nature of a *Quo Warranto.*

G **And** note, The different Judgments on Writs of *Quo Warranto* and Informations. *Ibid.*

Judgments thereon.

H **A Coroner's** Inquiſition quaſh'd, becauſe the Wound was not ſet forth, nor the Party died of it. *Salk.* 377.

Coroner's Inquiſition quaſh'd.

I **A Coroner** may cauſe the Body to be taken up ſoon after a Burial, but not after a long Time. *Ibid.*

Coroner.

K **For** Deer-ſtealing, if an Information be in due Time, the Conviction may be at any Time afterwards. *Salk.* 383.

Deer-ſtealing.

L **And** in Summary Convictions, Appearance aids Want of Summons. *Ibid.*

Want of Summoners.

M **Also** ſuch Convictions are to be taken ſtrictly againſt the Offender. *Salk.* 378.

N **Therefore** need not be laid *Contra Pacem* and *foris faciet' juxta formam Statut'* is ſufficient. *Ibid.* & 383.

Contra Pacem omitted.

O **Also** *Conſideratum quod Convictus eſt*, is enough without *foris faciet.* *Salk.* 378, 383.

Convict' eſt.

P **And** that Oath was made *de veritate premiſſorum* is enough. *Ibid.* 369.

The Oath.

Q **How** Execution ſhall go on Affirmance of Convictions. *Ibid.* 369, 378.

Execution.

R **And** the Executor of the Owner may ſue out Execution. *Ibid.* 379.

S *Qu.* **If** Conviction of Deer-ſtealing be pardon'd by Act of General Pardon. *Ibid.* 383.

Pardon.

T **On** 3 & 4 *W.* & *M. cap.* 5. a Seller of Deer-Skins may be convicted. *Ibid.* and ſee 542.

Seller of Deer-Skins.

U **Of** Averments in Indictments. *Salk.* 611.

Averments.

What is indictable.

All Cheats and Abuſes of Tradeſmen are indictable. *Comber.* 16. A

An Indictment lies for Riots, Breaches of the Peace. B

It lies for ſending a Challenge. *Comber.* 16. C

Or for a Nuſance. *Ibid.* D

Or for Kidnapping. *Ibid.* E

Or for lying with another's Wife. *Comber.* 377. F

It lies for calling a Juſtice of Peace Buffle-headed Fellow. *Ibid.* 46, 65. G

It lies for not performing an Order of Seſſions, tho' made with a *Quod cum* where it ſhould be abſolute. *Ibid.* 63, 213, 325. H

It lies for bringing back one removed by Order of Seſſions. *Ibid.* 205, 372. I

It lies for not Watching nor procuring one to watch. *Ibid.* 243. K

It lies for refuſing to take a poor Apprentice. *Ibid.* 298. L

So for turning away his Apprentice, and refuſing to take him again, *&c.* *Ibid.* 405. M

It lies againſt a Conſtable elected by the Cuſtom of a Corporation, for not taking on him the Office. *Ibid.* 416. N

It lies for erecting a Mountebank's Stage, tho' done with Licence. *Ibid.* 304. O

Words. Alſo Words may be indictable that are not actionable. *Ibid.* 66. P

The like. But if actionable, they ſeem not indictable. *Ibid.* 13. Q

And where an Indictment or an Action lies, *vide Ibid. Comber.* 17, and 66. R

For engroſſing. See an Indictment in *London* for engroſſing in *Surrey*, held well after a Verdict. *Comber.* 3. S

Perjury. But an Indictment in *Middleſex* for Perjury in *London* was quaſh'd on a Motion. *Ibid.* 13. T

Erecting a Cottage. For erecting a Cottage with a *Continuando*, was good for the erecting, but ill for the Continuance. *Ibid.* 307. U

Where an Indictment lies not. X

For Words. For Words of a Juſtice of Peace. *Comber.* 414. Y

For uſing a Trade. Indictment lies not for exerciſing a Trade within a City, not being free. *Ibid.* 243, 382. Z

The like. It lies not at the Seſſions for exerciſing the Trade of a Weaver or Clothworker. *Ibid.* 252. *a*

Riot. It lies not againſt a Juſtice of Peace for not binding over Rioters. *Ibid.* 317. *b*

A **It** lies not for not aſſiſting the Conſtable in ſearching for Nets, *&c.* on a Warrant of two Juſtices. *Comber.* 309.

Aiding a Conſtable.

B **Nor** does it lie at the Quarter Seſſion for Petit Treaſon. *Ibid.* 405.

Petit Treaſon.

C **There** was an Indictment of Treaſon, a Plea of Not guilty withdrawn, and a Confeſſion was enter'd. *Ibid.* 364.

Plea withdrawn.

D **Indictment** againſt a Bailiff for Extortion, *ut Ballivus* was quaſh'd. *Ibid.* 64.

For Extortion quaſh'd.

E **Indictment** for exerciſing the Art *De le Fabre* quaſh'd, for it ſhould be in *Latin. Ibid.* 212.

The like for uſing a Trade.

F **Indictment** for Forcible Entry *Exiſten' liberum tenementum,* not ſaying *ad tunc,* quaſh'd. *Ibid.* 288.

Forcible Entry.

G **An** Indictment ſaying *Deodecim* for *Duodecem* was quaſh'd. *Quære. Comber.* 286.

Deodecim for *Duodecem.*

H *Quære,* if it lies againſt an Overſeer for not making up his Accounts, *&c. Ibid.* 374.

Againſt an Overſeer.

I **Where** a Statute prohibits a Thing under a Penalty, or creates a new Duty to an Officer, the Indictment need not conclude *Contra formam Statuti. Ibid.* 205.

Contra formam Statuti.

K **And** where it ought to conclude ſo. *Ibid.* 307, 371.

L **An** Indictment for exerciſing a Trade, need not ſay it was a Trade at the Time of 5 *Eliz. Ibid.* 288.

Uſing a Trade.

M **An** Indictment ought to be plain and not to call a Bawdy-houſe a diſorderly Houſe. *Ibid.* 303.

Bawdy-houſe.

N **Nor** an Acceſſory, a Confederate. *Ibid.* 17.

Acceſſory.

O **To** ſay *ad Seſſion' tent' per adjournament'* need not ſay when it commenced. *Ibid.* 318.

Adjournment of Seſſions.

P **But** *adjournatum fuit* for *adjournatum eſt,* held Error. *Ibid.* 358.

The like.

Q **Note,** Vitious Indictments are to be ſet aſide, and where. *Ibid.* 13.

Indictments quaſh'd.

R **An** Indictment differs from a Preſentment, and how, ſee *Comber.* 225.

Preſentments.

S **See** an Indictment for a Miſdemeanor in ſpeaking ſcandalous Words of King *Charles* the Firſt. 3 *Salk.* 198.

For Words of a King.

T **It** was held, that it will not lie for keeping an Alehouſe without Licence, but this was againſt the Opinion of the Chief Juſtice. *Ibid.* 27. *Comb.* 17, 45.

Selling Ale without Licence.

U **The** Fact may be found in the County where the Party died, and not where the Wound was given. 3 *Salk.* 39.

A **Where** 'tis malicious, and an *Ignoramus* found, or the Indictment is erroneous, an Action lies. 3 *Salk.* 98.

Where the Proceedings were formerly.

B **Formerly** the King did not proceed on an Indictment for Felony till a Year after the Fact, that the Party might firſt bring an Appeal. *Ibid.* 314.

For Goods taken by Force.

C **Where** it lies for taking Goods, tho' they were his own, if taken by Force. *Ibid.* 187.

Againſt a Scold.

D **An** Indictment againſt a Woman for being a Scold, was quaſh'd. *Ibid.* 187.

Onerati to inquire omitted.

E **An** Indictment was quaſh'd for not ſetting forth that the Jury were *onerati,* to inquire for the King and the Body of the County. *Ibid.*

For a private Wrong.

F **Where** it will not lie for a private Wrong. 3 *Salk.* 188.

Caption.

G **Where** it was quaſh'd for Want of a Caption. *Ibid.*

Where it will not lie.

H **Where** quaſh'd where the Fact was not indictable. 3 *Salk.* 189.

The like.

I **An** Offence is not indictable where another Method of Puniſhment is appointed by any Statute. *Ibid.* 187, 189.

For Words of an Officer.

K **It** will not lie for ſpeaking ſcandalous Words to a Mayor of a Corporation, unleſs he was in the Execution of his Office. *Ibid.* 190.

Caption.

L **The** Caption was *Jurat' & onerat'*, without ſaying *Impanellat'*, and held good. *Ibid.* 191.

M **For** perſuading a Juſtice of Peace not to bail in a Caſe that was bailable. *Ibid.* 192.

Buying ſtolen Goods.

N **For** a Miſdemeanor in buying ſtolen Goods, knowing them to be ſtolen, it will not lie, becauſe acceſſory to the Felony, and he muſt be indicted as Acceſſory. *Ibid.* 193.

Writing a Letter.

O **It** lies at the Seſſions for writing a ſcandalous Letter. *Ibid.* 194.

Incertainty.

P **An** Indictment, if laid in the Disjunctive, is ill for Incertainty. *Mod. Caſes in Law and Equity* 330.

That Certainty is required.

Q **The** utmoſt Certainty is required therein, ſo as a Conviction may be pleaded to other Actions, *&c.* *Ibid.* 58, 296, 328.

Concluſion *contra formam Statuti.*

R **An** Indictment for conſpiring to raiſe Wages, not ſaying, For conſpiring to raiſe Wages *contra formam Statuti,* was yet held good, for Conſpiracy is an Offence at Common Law. *Ibid.* 10.

The County omitted.

S **Note,** the Conſpiracy laid in the Town of *Cambridge,* not ſaying in what County, was yet held good. *Ibid.*

A **Where** a bare Conſpiracy to do a lawful Act, if to an unlawful End, was held indictable, tho' no Act be done. *Mod. Caſes in Law and Equity* 321.

Conſpiracy.

B **It** is ſaid Indictments for Conſpiracies are never quaſh'd. *Ibid.*

The like.

C **See** of calling over the Panel and challenges, *&c.* in Indictments of High-Treaſon. *Mod. Caſes in Law and Equity* 86.

Of the Panel and Challenges.

D **See** of an Indictment for Piracy in ſinking a Ship againſt the Maſter, *&c. Ibid.* 66.

Piracy.

E **See** of an Indictment for Piracy on a Commiſſion, according to the Statute 28 *H.* 8. *cap.* 19. *Ibid.* 74, 75.

The like.

F **The** Defendant being acquitted on two Indictments of Felony was found guilty on a third as a Cheat. *Ibid.* 77.

Acquittal on a Felony, and Conviction of a Cheat.

G **On** an Indictment of Treaſon the Priſoner before he pleads, *&c.* is to have his Irons taken off. *Ibid.* 82.

When the Irons to be off.

H **See** the Exceptions to *Layer*'s Indictment, and the Anſwers thereto. *Ibid.* 83, 84, *&c.*

Exceptions to an Indictment.

I **An** Indictment of Murder was removed out of *Wales*, and tried in an *Engliſh* County. *Ibid.* 135, 136.

Removal out of *Wales*.

K **Two** indicted of Murder, one of them acquitted, and the other found guilty. *Ibid.* 164.

Two indicted; one acquitted.

L **See** where an Indictment was laid for ſtealing the Goods of a Perſon unknown. *Mod. Caſes in Law and Equity* 248, 165.

For Theft upon a Perſon unknown.

M **On** Not guilty pleaded to ſuch Indictment, a Property muſt be proved in ſomebody. *Ibid.* 248.

Property to be proved.

N **One** try'd and found guilty as acceſſory to buying and receiving ſtolen Goods, tho' the Principal being afterwards try'd, was acquitted on the Statute 5 *Annæ*, *cap.* 13. *Ibid.* 264, 265.

Receiving of ſtolen Goods.

O **An** Indictment quaſh'd, it being *Præſentatus exiſtit qua* for (*Quod Billa eſt vera.*) *Ibid.* 296.

Indictment quaſh'd.

P **On** an Indictment and an Acquittal in *B. R.* no Action to be brought in the *Marſhalſea*, *&c.* for a malicious Proſecution. *Ibid.* 307, 308.

Where the Action is not to be brought.

Q **Where** an Indictment for ſecreting a Woman pregnant *illegitimo fœtu* was held ill. *Ibid.* 336.

Where held ill.

R **In** an Indictment for a Reſcue the *Fi. fa.* or *Ca. Sa. &c.* muſt be ſet forth at large. *Ibid.* 357.

Reſcue.

S **In** Treaſon the *Venire Facias* not to be read, *&c.* after a Verdict. *Ibid.* 91.

Venire facias.

Inducement.

Inducement, See
Damage Feaſant.
Diſcontinuance.
Traverſe.
Verdict.

Inducements, how to be.

INducements to Actions do not require ſo much Certainty as is neceſſary in other Caſes. 2 *Mod.* 70. A

A General *Indebitatus* is good where it is Inducement to the Action.

A General *Indebitatus* is not ſufficient where it is the Ground of the Action; but where it is but the Inducement to the Action, as in Conſideration of forbearing the Debt till ſuch a Day (for that they agreed upon the Debt, and ſo this is but a collateral Promiſe) it is good without ſhewing how due. *Cro. Jac.* 548. *pl.* 8. B

What is the Inducement, and what the Tort.

In an Action for incloſing part of a Common, the Common is but the Inducement, the Incloſure is the Tort; and altho' the Verdict doth not exactly hit the Inducement, yet it's good enough. *Cro. Jac.* 630. See Title **Verdict.** C

Conuſance as Bailiff to a Corporation, without ſhewing how incorporated, and good.

Conuſance made by the Defendant as Bailiff to a Corporation, without ſhewing how incorporated, and good, being only Inducement to alledge a Seiſin in them. 3 *Lev.* 107. D

How an Inducement to a Traverſe ought to be.

How an Inducement to a Traverſe ought to be. *Lutw.* 1434. E

What is a good Inducement.

Nothing can be an Inducement to a Traverſe, but ſuch a Thing as is traverſable. 2 *Leon. Caſe* 37. F

What an Inducement to a Traverſe muſt be.

An Inducement to a Traverſe muſt be ſuch Matter which is good and juſtifiable in Law. *Cro. Eliz.* 829. *pl.* 35. G

The Inducement to the Traverſe ought to be ſufficient Juſtification for the taking of a Diſtreſs.

Where the Inducement to the Traverſe (which ought always to be good) is not ſufficient Cauſe of Juſtification for the taking a Diſtreſs, the Plea is always naught. *Cro. Eliz.* 901. *pl.* 5. H

Where the ſaying of *Poſſeſſionatus fuit* is but Inducement to the Juſtification, the Defendant need not ſet forth his Leaſe, &c.

A **In** Battery the Defendant ſays, That he was poſſeſs'd of an Houſe in *A.* for Years, and that the Plaintiff enter'd into it to put him out of Poſſeſſion, and thereupon he *molliter manus impoſuit* upon him, to put him out, *& dampnum, &c. ſi quod,* it was in the Defence of his Poſſeſſion: The Defendant demurr'd, becauſe he did not ſhew who made the Leaſe, nor how many Years. *Curia.* The Plea for the ſaying, that he was poſſeſs'd, is but Inducement to his Juſtification, and not the Subſtance; for that is, that he offer'd to put him out of Poſſeſſion, and out of his Houſe; and whatſoever Title he had, whether by Leaſe or Will, or any other Title, it is not material; for the Title not coming in Queſtion, it need not to be ſo certain, as where the Title is pleaded to make Claim. *Cro. Jac.* 138. *pl.* 13.

Title.

B **Inducement** to a Traverſe ought in ſome Caſes to contain a ſufficient Title. *Salk.* 353, 357.

Traverſe.

C **Where** there may be an Inducement without ſetting out a Title. *Salk.* 355.

The like.

D **The** Inducement to a Traverſe cannot be traverſed. *Ibid.*

Induction.

See **Inſtitution.**

Induction, what it is.

E **After Inſtitution there muſt be Induction, which is the putting of the Clerk in the Poſſeſſion of the Church, and he is thereby made a compleat Incumbent; and therefore the Biſhop, who inſtitutes, makes a Precept to the Perſon who hath the Right of Inducting, requiring him to induct the inſtituted Clerk into his Benefice.** Clergyman's Law, 109.

Where the Parſon hath the Freehold of the Temporalities.

F **As** to the Temporalities, and as to the Glebe-Land, *&c.* the Parſon hath no Freehold in them, till Induction. 4 *Rep.* 79. *a.*

Induction gives the actual Poſſeſſion.

G **Induction** makes the Prebendary to have the actual Poſſeſſion of the Prebend; for before that he hath no Freehold in Deed, nor in Law. *Hare & Brickley,* 2 *Plow.* 529, 530.

The Freehold is ſettled by Induction.

Induction ſettles and fixes the Freehold in the Incumbent. A

By whom to be made.

Induction by a Mandate from the Archdeacon to one who doth not live in his Archdeaconry, is good. *Salk.* 195. B

Infant.

See
- Adminiſtration.
- Attorney.
- Debt.
- Diſability.
- Ejectment.
- Error.
- Executor.
- Guardian.
- Pleas.
- Remainder.
- Trial.

An Infant, what.

AN Infant is a Perſon who is under the Age of Twenty-one Years, and therefore cannot take care of his Eſtate: But the Law takes particular Care, both of him and his Eſtate. See much good Matter in Caſe of Infancy. 2 Keb. 37, 38, 39. C

Infant delivers Money with his own Hand, it is only voidable.

If an Infant deliver Money with his own Hand, it is but voidable, and to be recovered by an Action of Account. *Hob.* 77. D

Where an Infant may levy a Fine he may declare the Uſes.

Where the Law gives an Infant Power to levy a Fine, it alſo gives him Power to declare the Uſes of it by Deed. *Hob.* 224. 2 *Leon. Caſe* 193. E

When an Infant may purſue his Action after the Limitation by Statute.

At what Time an Infant may purſue his Action, after the Years limited by the Statute 21 *Jac. cap.* 16, are elapſed. 2 *Saund.* 121. F

A Man may marry at fourteen, a Woman at twelve.

The Age for a Man to marry is fourteen, and for a Woman twelve. *Hob.* 225. G

When an Infant may take out Adminiſtration in his own Right.

An Infant of ſeventeen ſhall take out Adminiſtration, or prove the Will in his own Right; for then the Power of Adminiſtrator or Executor, *durante minori ætate*, ceaſeth. *Vaugh.* 93. H

Where

A **Where** an Infant Executor releaſeth without receiving Satisfaction it is no Bar; for if it ſhould, it would amount unto a *Devaſtavit*, and charge his own Goods, which the Law will not ſuffer; and alſo in doing of this (which is a Tort) he hath not performed his Duty; but whatever Act he doth, which it was his Duty to do, ſhall bind him; as giving a Releaſe upon receiving the whole Money, Payment of juſt Debts, *&c.* 5 *Rep.* 27.

Infant Executor not barred if he releaſe without Satisfaction, and why.

B **An** Infant Copyholder makes a Leaſe, rendring Rent (which is but voidable; if there be no rendring Rent it is abſolutely void) and at his full Age accepts the Rent; this was held a good Leaſe, altho' he pleaded it to be a Forfeiture of his Eſtate. *L ab* 199.

Infant Copyholder leaſes rendring Rent, if he accepts it at full Age, the Leaſe is good.

C **An** Infant ſhall not have any Benefit of his Nonage where he claims as a Purchaſer, the Law protecting Infants only in Caſes of Diſcents. *Carter* 87, 88.

No Benefit of Nonage where Infant claims as Purchaſer.

D **A Recovery** was ſuffered by an Infant, by Virtue of a Privy Seal for that Purpoſe directed to the Lord Chief Juſtice. *Hob.* 196.

Infant ſuffers a Recovery by Virtue of a Privy Seal.

E **An** Infant ought not to appear to an Action brought againſt him by his Attorney, but he muſt appear by his Guardian. *Paſch.* 24 *Car. B. R.* For he cannot make an Attorney, and the Guardian is aſſigned (but with the Conſent of the Infant) by the Court. *Trin.* 25. *Car. B. R.* Yet if the Infant will not conſent to it, the Court may aſſign a Guardian, or elſe it would be a great Prejudice in delaying of Juſtice. 2 *Saund.* 212, 213.

He muſt appear by Guardian, not by Attorney.

F **If** an Infant declare by Guardian, or *Prochein amy*, the Defendant is not compellable to plead until the Plaintiff ſhews a Rule of Court for his Admittance. *Per Magiſtrum Liveſay, & alios, &c. Paſch.* 31 *Car.* 2. *Reg.*

Defendant not bound till Infant declaring by Guardian ſhews a Rule for his Admittance.

G **An** Action of Debt or Caſe doth lie againſt an Infant upon his Promiſe to pay for Neceſſaries, as Meat and Drink, Lodging and Apparel; but if the Infant and the Party from whom he had theſe Neceſſaries, do come to an Account, and reduce that which the Infant is indebted for them, to a certain Sum of Money, and upon this Account the Party brings an Action againſt the Infant, for the Money ſtated to be due by the Account; this Action will not lie againſt the Infant. *Trin.* 24 *Car. B. R.* For the Account upon which the Action is grounded is void; for an Infant can agree to no ſuch Account; for the Law doth not account him a Perſon able to ſtate an Account. See after upon a ſingle Bill.

Where Action of Debt or Caſe lies againſt an Infant for Neceſſaries, and where not.

H **A Statute** is not extendible againſt an Infant, but Chancery will relieve againſt an Infant. 1 *Lev.* 198.

A Statute not extendible againſt an Infant, but Chancery will relieve.

I **Infancy** may be given in Evidence upon *Non Aſſumpſit.* 2 *Lev.* 144. *Salk.* 279.

Infancy given in Evidence on the General Iſſue.]

And

Infant ought not to appear by Guardian without Admittance; But if he do, 'tis only a Miſdemeanor in his Attorney.

A And if he appears by Attorney, ſuch Attorney, knowing him to be an Infant, it is a Miſdemeanor in the Attorney; for which the Court may puniſh him if they pleaſe; but no Error. *Per Magiſtrum Liveſay & alios, &c. Paſch.* 21 *Car.* 2. *Reg.* See 1 *Keb.* 184.

How and in what Manner Infants may be compelled to aſſign over Truſts or Eſtates by Way of Mortgage.

7 Ann.

B *Anno* 7 *Annæ*, by an Act intituled, *An Act to enable Infants who are ſeiſed or poſſeſſed in Fee, in Truſt, or by Way of Mortgage, to make Conveyances of ſuch Eſtates:* It is enacted, That any Perſon under the Age of one and twenty Years, by the Direction of the Court of Chancery or Exchequer, ſignified by an Order made upon hearing of all Perſons concern'd, on the Petition of the Perſon for whom ſuch Infant ſhall be ſeiſed or poſſeſſed in Truſt, or of the Mortgagor or Guardian of ſuch Infant, or Perſon intitled to the Money, ſecured by or upon any Lands, *&c.* whereof any Infant is or ſhall be ſeiſed or poſſeſſed by Way of Mortgage, or of the Perſon intitled to the Redemption thereof, to convey and aſſure any ſuch Lands, *&c.* in ſuch Manner as the Court of Chancery or Exchequer ſhall, by ſuch Order to be obtained direct, to any other Perſon; and ſuch Conveyance ſo to be had and made, ſhall be as good and effectual in Law as if ſuch Infant was, at the making thereof, of the Age of twenty-one Years.

C And alſo, That every ſuch Infant, being only a Truſtee or Mortgagee, ſhall and may be compelled by ſuch Order ſo to be obtained as aforeſaid, to make ſuch Conveyance or Aſſurance as aforeſaid, in like Manner as Truſtees or Mortgagees of full Age are compellable to convey or aſſign their Truſts or Mortgages.

Where the Heir ſhall take Advantage of the Anceſtor's Infancy.

D No Perſon ſhall take Advantage of the Infancy of his Anceſtor, but he that hath a Right diſcended to him from that Anceſtor. But the Heir may take the Benefit of the Condition, tho' no Right deſcended to him from his Anceſtors. 8 *Rep.* 44. *b.*

An Infant may voluntarily bind himſelf Apprentice, and if he continues ſeven Years may uſe his Trade.

But no Covenant nor Bond ſhall bind him.

What Remedy where he miſbehaves himſelf.

E An Infant may voluntarily bind himſelf an Apprentice, and if he continues ſeven Years, may have the Benefit of uſing his Trade; but neither by the Common Law, nor by any Words of the Statute of 5 *El. cap.* a Covenant or Bond for his Apprenticeſhip ſhall bind him; but if he miſbehave himſelf his Maſter may correct him in his Service, or complain to a Juſtice of the Peace to have him puniſhed according to the Statute. *Cro. Car.* 179. *pl.* 3.

No Award ſhall bind him.

F No Award ſhall bind an Infant. *Chanc. Rep.* 380.

What Grants or Deeds made by an Infant, are void.

And what are voidable.

G All Gifts, Grants or Deeds, made by an Infant, which do not take Effect by Delivery of his Hand, are void; but ſuch Gifts, Grants or Deeds, made by an Infant, by Matter in Deed or Writing, which take effect by Delivery of his own Hand, are voidable by himſelf and his Heirs, and thoſe which ſhall have his Eſtate. *Perk.* Title Grants. Alſo, if he makes a Letter of Attorney for the Execution of them, it is void. See 8 *Rep.* 42. *b.* 43.

A Where a Deed is void at the Commencement, no Act afterwards can make it good. *Daliſ.* 64. *pl.* 25.

A void Grant can never be made good.

B An Infant Executor ſells the Goods of his Teſtator at an Under-value, this Sale ſhall bind him, notwithſtanding his Infancy. 3 *Leon.* Caſe 192. See *Cro. Eliz.* 254. *pl.* 25.

Sale of Goods by an Infant Executor under the Value ſhall bind him.

C An Infant Executor at Thirteen proves the Will, and *J. S.* by his Conſent ſells Goods to the Uſe of the Executor, this is no Adminiſtration in *J. S.* doing what he did as Servant to the Infant. *Cro. Eliz. pl.* 25.

An Infant Executor at Thirteen may order a Servant to ſell the Goods.

D An Infant Executor appears by Attorney, and Judgment againſt him; it is Error. *Cro. Jac.* 441. *pl.* 14.

Infant Executor appears by Attorney, it is Error.

E So if an Infant acknowledge a Statute or Recognizance, it is not void, but voidable by *Audita Querela*. 10 *Rep.* 43. *a.*

So of a Statute or Recognizance.

F An Infant bargains and ſells by Deed inrolled, and during his Infancy levies a Fine to the Bargainor; And it was held, that although the Indenture was void in Reſpect of the Thing which was to paſs by the Deed, yet the Indenture was only voidable, and then when the Fine was levy'd upon it, the Bargain and Sale became irrevocable; except only in Caſe the Fine be revers'd for Infancy, which if it be not, then it ſerves to declare the Uſe of the Fine. *Dal.* 47. *pl.* 6. *Note*, The Fine muſt be revers'd by Error and Inſpection during his Infancy, otherwiſe it will bind him for ever. See 2 *Inſt.* 484. So alſo in Caſe of a Statute or Recognizance, it muſt be avoided during his Minority by *Audita Querela*, otherwiſe it will bind him: *Ibid.* 1 *Inſt.* 180. *b.* 2 *Keb.* 141. *pl.* 12. See *Poſtea*, and *Moor*, Caſe 206.

Bargain and Sale by Deed inrolled by an Infant, and a Fine levy'd upon it;

How it ſhall operate.

G A Grant of the Office of a Biſhop's Regiſter to an Infant in Reverſion, after the Death of the preſent Officer is good. *Cro. Car.* 279. *pl.*

A Grant in Reverſion to an Infant of a Biſhop's Regiſter, is good.

H An Infant can't ſurrender a future Intereſt by taking of a new Leaſe; for he can't ſurrender by Deed that is void; and a Surrender by Acceptance of a ſecond Leaſe is void; unleſs there be an Increaſe of the Term, or Decreaſe of the Rent: And where there is no Benefit comes to him, his Acts are meerly void. *Cro. Car.* 502. *pl.* 2.

An Infant can do nothing to prejudice himſelf.

What Acts he may do, and what not.

I In a Recovery the Vouchee was a Feme Covert under Age, and appear'd by Attorney, and held to be Error; but not if ſhe had appear'd in Perſon, or by Guardian. 5 *Mod.* 209.

A Recovery ſuffered by an Infant by Attorney, revers'd; not if in Perſon, or by Guardian.

A voidable Leaſe made good by Acceptance of Rent.

A **Where** an Infant makes a Leaſe under his Hand and Seal, paying of Rent; and after his coming to full Age, he accepts the Rent: This Acceptance makes this voidable Leaſe good.

A Leaſe made to an Infant is not void, but voidable, and how to be avoided.

B **A Leaſe** made to an Infant is not void, but voidable at his Election; for if it were for his Benefit it ſhall not be void, but he may avoid it by waving the Land before the Rent-Day. *Cro. Jac.* 320.

Infant Defendant, the Plaintiff ſhall have ſix Years to bring his Action after he is of Age.

C **Where** the Defendant is an Infant the Plaintiff ſhall have ſix Years to bring his Action in, after he comes of Age. *Lutw.* 243, 244.

Where a Cuſtom of a Manor ſhall not bind an Infant Copyholder.

D **A Cuſtom** of a Manor, that if a Surrender of a Copyhold is made, and the Surrendree doth not come in to be admitted after three Proclamations at three Courts, the Bailiff may ſeize the Lands as forfeited: This Cuſtom ſhall not bind an Infant. *Show. Rep.* 32, 84, to 88. *Salk.* 386. *Comb.* 318.

An Infant was bail, and brought his *Audita Querela*.

Tried by Inſpection, and ſo found.

And the Recognizance was diſcharged.

E **An** Infant was Bail, and afterwards brought his *Audita Querela*; to which the Plaintiff pleaded, that he was of full Age, and Iſſue was thereupon taken; and upon the Inſpection of him by the Court, and View of the Pariſh Regiſter-Book, the Court adjudg'd him to be under Age; and alſo adjudg'd, that the Recognizance ſhould be diſcharged. *Mich.* 5 *W. & M. B. R.* See *Cro. Jac.* 59. *pl.* 6. And alſo in Title *Audita Querela*.

Four *Aſſumpſits* laid in one Day. Defendant pleads Non-age. Plaintiff replies to two full Age, and Neceſſaries to the other two.

F **Four** *Aſſumpſits* were laid upon one Day; the Defendant pleads *Infra Ætatem*. The Plaintiff replies as to two of them, that the Defendant was of full Age; and as to the other two, that they were for Neceſſaries. The Defendant demurs for Contradiction, for that he could not be an Infant and of full Age at the ſame Time. *Curia*. The Time is not material here, and the Plaintiff may ſever in his Replication. 8 *W. B. R.*

Where one Infant Defendant pleads with others, it is Error in Fact.

In nullo eſt erratum, is a Confeſſion of the Error in Fact.

G **Eight** Defendants, one of them an Infant; in Treſpaſs againſt them they all appear by Attorney. It is Error in Fact, and the pleading of *In nullo eſt erratum*, is a Confeſſion of the Error in Fact. 1 *Lev.* 294.

The Spiritual Courts may appoint Guardians to Infants who have perſonal Eſtates.

H **The** Spiritual Courts may appoint Guardians to Infants who have only perſonal Eſtates. 2 *Lev.* 162. *Vide* 217.

Aſſumpſit againſt an Executor for Money laid out. Defendant pleads his Teſtator was an Infant. Reply, That it was for to buy Neceſſaries for his Family: It is good.

I **An** *Indebitatus* was brought againſt an Executor for Money lent and laid out. The Defendant pleads Infancy in the Teſtator. The Plaintiff replies, That it was Money lent and expended in his Family to buy neceſſary Victuals and Clothes. It was inſiſted, that the Replication was naught, becauſe he had not ſet forth how many Servants he had in his Family. *Curia*, That ought to come of the Defendant's Part, for he ought to ſet it forth. 9 *W*. See 5 *Mod*. 368.

A **How** far an Infant ſhall be chargeable, and how the Pleadings ſhall be. *Lutw*. 241, 242.

How far an Infant ſhall be chargeable, and how the Pleadings to be.

B **An** Infant requeſted another to be bound with him for the Payment of 20 *l*. which the Party did, and was afterwards ſued for it, and paid it; when the Infant came of Age the Party put him in Mind of it, and deſired him to pay it; thereupon he promiſed to pay it: And held, that tho' here was no preſent Conſideration, whereupon an *Aſſumpſit* will ariſe, yet upon the whole Matter the Action did well lie. 3 *Leon*. Caſe 215.

An Infant after his full Age promiſed, without any preſent Conſideration, a Debt contracted in his Infancy; and it did bind him.

C **The** Plaintiff paid Money for the neceſſary Meat and Drink of the Defendant, being an Infant, and took a Bond in double the Sum; this is void: But if it had been in the very Sum, it had been good. *Cro. Eliz*. 920. *pl*. 16.

An Infant can't bind himſelf in a Penalty for Neceſſaries, but may bind himſelf in the very ſame Sum.

D *Aſſumpſit* for Wares ſold; the Defendant pleads Infancy: The Plaintiff replies, That they were *pro neceſſario victu & apparatu & ad manutentionem familiæ*: The Defendant ſays, That he kept a Mercer's Shop at *S*. and bought them to ſell again; and traverſes the buying of them *pro neceſſario victu, &c*. And held, That an Infant ſhall not be bound for any Thing but for his neceſſary Meat, Drink, Apparel, and Learning. Neither ſhall his Covenant for binding himſelf an Apprentice oblige him, unleſs by ſpecial Cuſtom. *Cro Jac*. 494. *pl*. 15, 560, 561.

For what Goods and Wares an Infant ſhall be bound to pay, and for what not.

Not by Covenant for binding himſelf an Apprentice; unleſs by Cuſtom.

E **An** Infant may make his Will for Goods at Seventeen, but not for Lands till twenty-one Years of Age. *Paſch*. 13 *W. B. R.*

May make his Will at Seventeen, but not for Lands.

F **But** it is ſaid where Adminiſtration is granted *durante minori ætate*, there the Adminiſtration ſhall not determine till the Party comes to twenty-one; becauſe the Statute for granting of Adminiſtration requires Adminiſtrators to give Bonds, which an Infant cannot do. *Paſch*. 13. *W*. *Sed Quære*.

Where *durante minori ætate*.

G **Where** an Infant makes a Deed, and delivers it within Age; and afterwards, when he comes of full Age, he delivers it again; this ſecond Delivery and Deed are both void, becauſe a Deed muſt take Effect from the firſt Delivery; for *quod ab initio non valet tractu temporis convaleſcere non poteſt*. 3 *Rep*. 35. So likewiſe it is in the Caſe of a Will for Lands.

A Deed redelivered within Age, and delivered at full Age, is void.

Infancy in the Plaintiff help'd by Verdict for the Plaintiff, by the Statute of *Jeofails*, 21 **Jac. cap.** 13.

A **By** the Statute of 21 *Jac. cap.* 13. of *Jeofails*, after Verdict given in any Court of Record, Judgment ſhall not be ſtayed or reverſed, by Reaſon that the Plaintiff in any Perſonal Action or Ejectment, being under the Age of twenty-one Years, appear'd by Attorney, and the Verdict paſſed for him.

Two Executors, and one is under Age; the Action muſt be brought in both their Names.

B **If** there be two Executors, and one is under Age, yet the Action muſt be brought in both their Names; becauſe thoſe of full Age ſhall make an Attorney for him under Age. 2 *Saund.* 213.

A Releaſe by an Infant Executor, without Conſideration, is void.

The whole Penalty muſt be recover'd, or naught.

C **Two** Executors; one an Infant, who releaſes without any Conſideration: This is void. *Cro. Eliz.* 671. *pl.* 27. But upon Receipt of the whole Penalty of the Bond, it is good; not of the Money in the Condition, if forfeited. *Cro. Car.* 490. *Moore* Caſe, 289.

Judgment by Default againſt an Infant in Dowry is not Error.

D **By** the better Opinions, where Judgment is recovered againſt an Infant by Default in Dower, it is not Error. *Cro. Eliz.* 567. *pl.* 1.

How Judgment is to be upon a Verdict in Dower againſt an Infant.

E **Where** a Judgment is recovered againſt an Infant in Dower, upon a Verdict, the Judgment muſt be, *Sed nihil de miſericordia quia Infans. Cro. Car.* 410. *pl.* 5.

Infancy ſhall not ſave the Breach of a Condition.

F **Where** the Eſtate of an Infant is upon Condition to be performed by the Infant, and the Condition is broken during his Minority, the Land is loſt for ever. 8 *Rep.* 44. *b.*

How an Infant muſt aſſign Errors.

G **Where** an Infant brings a Writ of Error to reverſe a Judgment againſt him, he muſt aſſign his Errors by Guardian, and not by Attorney. *Co. Entr.* 289. *Cro. Jac.* 250. *pl.* 2. See Title **Guardian.**

Where by the King's Privy Signet.

H **So** alſo by his Guardians, where the King ſent his Letters under his Privy Signet and Sign Manual, directed to the Juſtices of the Common Bench for that Purpoſe. *Hob.* 196.

Where an Infant ſues, it muſt be by Guardian or *Prochein amie*.

He muſt defend by Guardian only.

A Defendant cannot be admitted *ad proſequendum*.

I Where an Infant is to demand or gain, he may ſue by Guardian or *Prochein amie*. But where he is to defend a real or perſonal Action, it ought to be always by Guardian. Alſo admitting of a Defendant *ad proſequendum* is ill and prepoſterous. *Cro. Jac.* 640. *pl.* 5. 641. *Cro. Car.* 161. *pl.* 2.

Where a Common Recovery ſhall bind an Infant.

K **A Common Recovery** ſuffered by an Infant by Guardian is good, and ſhall bind him; Recoveries being Common Aſſurances, and there being very many Precedents for it. *Cro. Car.* 307. *pl.* 8. See Tit. **Error, Recovery.**

Where an Infant ſuffers a Recovery by Guardian.

L **Where** a Common Recovery was ſuffered by an Infant by his Guardian. 1 *Leon.* Caſe 296.

A **Where** the Vouchee in a Common Recovery is within Age, here the Infancy muſt be tried by Inſpection, and no Writ of Error lies at full Age. 1 *Sid.* 322. *pl* 14. 1 *Inſt.* 380. *b.* 2 *Keb.* 341. *pl.* 12.

How Infancy in a Recovery ſhall be tried.

B **An** Infant may ſue an Appeal *de morte fratris* by Guardian, tho' but nine Years of Age. *Mod.* 646.

An Infant may ſue an Appeal by Guardian.

C **What** Leaſes made by Infants are void, and what voidable. *Salk.* 196.

Leaſes.

D **What** Contracts made by him are good, and what not. *Salk.* 156.

Contracts.

E **How** he muſt ſue and be ſued. *Ibid. Carth.* 256.

Suits.

F **For** what he is puniſhable. *Ibid.*

G **Whether** he is chargeable for Money lent for Neceſſaries. *Salk.* 196, 197. *Comb.* 432.

Neceſſaries.

H **Where** Infancy is pleadable in Abatement it ſhall not be aſſigned for Error. *Salk.* 197.

Pleading Infancy.

I **An** Infant may buy Neceſſaries, but cannot borrow Money to buy Neceſſaries. *Salk.* 279, 386, 387.

Money lent.

K **Alſo** a Bond given by an Infant or Ideot for any Purpoſe is void. *Salk.* 675.

Bonds.

L **See** divers Caſes cited of Recoveries ſuffered by Infants on a Privy Seal, but diſallowed. *Salk.* 567.

Recoveries.

M **In** an Appeal, *&c.* the Writ and Suit of an Infant is ſubject to the Direction of the *Prochein amie*, and not of the Infant himſelf. *Salk.* 176, 177.

Appeals.

N **An** Infant of 14 may make a Will. *Comb.* 50.

Will.

O **An** Infant appearing by Attorney the Action is diſcontinued. *Comb.* 63.

By Attorney.

P **What** Acts of an Infant are void and what voidable, and how. *Comb.* 468, 469.

Void and voidable.

Q **If** an Infant borrows Money, and at full Age promiſes Payment, he is bound. *Comb.* 381.

Monies borrowed.

R **Where** the Trial of Infancy ſhall be, and how. *Skinner* 10, 11.

Trial.

S **An** Infant Defendant was admitted *ad proſequendum per Prochein amie*, yet good. *Mod. Caſes* in *Law* and *Equity*, 25.

Admiſſion.

T **See** an Infant brought in by *Habeas Corpus*, and deliver'd to his Guardian, though objected he would take in Remainder, *&c.* *Mod. Caſes* in *Law* and *Equity* 214.

Guardian a Remainder-Man.

U **An** Infant being Bail for another was taken in Execution, but diſcharged by an *Audita Querela*. *Carth.* 278, 279.

Bail.

Executor. **Where** he is ſole Executor he cannot ſue *per Attornatum*. *Carthew* 123. A

Replication. **Infancy** was pleaded, and the Plaintiff replied for Neceſſaries generally without ſhewing what they were, and held good. *Carth.* 110. B

Plea. **Where** the Defendant, an Infant, is joined with other Defendants, yet he muſt plead by Guardian. *Carth.* 123. C

Ibidem. **Infancy** pleaded in Bar to a Bill of Exchange, was held good. *Carth.* 160. D

Inferior Courts.

Inferior Courts, what they are. **INferior Courts are all the Courts in** England, **but only the Courts in** Weſtminſter-hall; **which Courts in** Weſtminſter-hall **are the Superior Courts.** E

The Manner of pleading in inferior Courts. **The** Manner of pleading Recoveries in Inferior Courts. 1 *Mod.* 170, to 173. F

A *Capias* awared to appear at the next Court, and ſays not when, is naught. **In** an Inferior Court a *Capias* is returnable at the next Court, and ſays not upon any Day certain; ſo that he may be detained in Priſon a long while, not knowing when the Court ſhall be holden; and therefore adjudged to be naught. *Cro. Jac.* 314. *pl.* 15, 517. G

Vide **Habeas Corpus.**

Information.

A AN Information for the King is that which for a Common Perſon is called a Declaration.

Information, what.

B **Where** the whole Sum is given by a Statute to any Perſon who will ſue for the ſame, the Perſon who will ſue may bring his Action *Qui tam*, or ſue in his own Name if he pleaſes; and I think it is beſt to ſue in his own Name.

Where the whole Sum is given by the Statute to the Informer, he may bring his Action *Qui tam*, or ſue in his own Name.

C **All** Informations or Actions to be brought upon Penal Statutes by an Informer, or *Qui tam*, or in his own Right where a Sum certain is given to the Proſecutor, muſt be brought in the proper County where the Offence was committed, and within a Year after the Offence committed, unleſs the Statute upon which ſuch Information or Action is brought directs the contrary; but the King ſhall have two Years Time.

All Informations by Informers muſt be brought in the proper County.

D **If** the Marſhal of the King's Bench do miſdemean himſelf in his Office, to the Prejudice of any Perſon, he who is prejudiced by his Miſdemeanor, may prefer an Information againſt him in this Court: *Hill.* 23 *Car. B. R.* And if he be found guilty upon a Trial thereupon had, he may be fined by this Court, and ſhall make Satisfaction to the Party alſo.

Information lies againſt the Marſhal of the King's Bench for any Miſdemeanor in his Office.

E **An** Information may be preferred in this Court againſt the Inhabitants of any Town or Village in *England*, for the not repairing of the Highways, which by Law they are bound to repair. *Mich.* 1649. *B. S.* For this Court may puniſh Offences done againſt the Publick Weal all *England* over, if other Juriſdictions be negligent to do it.

Likewiſe againſt Inhabitants for not repairing of Highways.

F **Altho'** an Information be faulty in the Body of it, yet upon a Motion the Court will not quaſh it, but the Defendant muſt demur to it for its Inſufficiency: *Paſch.* 1650. *B. S.* 24 *Maii.* But it is otherwiſe of an Indictment; the Difference ſeems to be becauſe Informations uſe to be preferred for greater Offences, and more pernicious to the Commonwealth than Indictments uſually are.

The Court will not quaſh a faulty Information, but compel the Defendant to demur to it.

G **It** was the Opinion of the whole Court that Informations do lie at the Common Law. 5 *Mod.* 464.

Informations lie at the Common Law.

Informations muſt be brought in the ſuperior, and will not lie in inferior Courts, and why.

A **An** Information upon a Penal Statute muſt be ſued in one of the ſuperior Courts, and cannot be brought in any inferior Court, becauſe the King's Attorney cannot be there to acknowledge or deny, as he can in a ſuperior Court. *Cro. Jac.* 538. *pl.* 5.

Fines aſſeſs'd in Court upon Informations, cannot be afterwards mitigated.

B **Fines** aſſeſs'd in Court by Judgment upon an Information, cannot be afterwards qualified or mitigated. *Cro. Car.* 251. *pl.* 1.

How it is upon a Penal Law, where the King begins firſt; and where the Informer *Qui tam* begins firſt.

C **If** he that prefers an Information againſt another for an Offence done againſt a Penal Statute, is to have ſuch Part of the Penalty which ſhall be recovered upon this Information, and the King ſuch other Part as the Statute directs; and if an Informer do prefer an Information upon the Statute, before any Information is preferred by the King, the King cannot hinder the Informer from having his Proportion of the Penalty given him by the Statute: But if the King do firſt prefer the Information, he may inform for the whole Penalty. *Paſch.* 23 *Car.* 1. *B. R.* For the King is not bound to ſtay till an Informer prefer the Suit, but may ſue at any Time; and if nobody inform, none hath Right to the Penalty but the King; and therefore he may pardon it whenever he pleaſes, without Wrong to any.

A *Nolle Proſequi* by the King, ſhall not ſtop the Informer.

D **An** Information *Qui tam, &c.* The King's Attorney enter'd a *Nolle Proſequi,* which was pleaded in Bar againſt the Informer. *Cur'.* This Entry is not any Bar *quoad* the Informer; ſo the Nonſuit of the Informer is no Bar againſt the King. 1 *Leon.* 119. *Caſe* 161. *Cro. Eliz.* 583. *pl.* 10.

The King may proceed upon an Information upon the Death of the Informer.

E **Upon** an Information upon a Penal Statute before any Plea pleaded the Informer died; the King's Attorney prayed that he might proceed upon it for the King, which was granted him. *Cro. El.* 583. *pl.* 10.

Common Informers muſt bring their Action in the proper County, by 31 **Eliz. cap.** 5.

But the Party griev'd may have it any where.

F **Tho'** the Statute of 31 *Eliz. c.* 5. reſtrains common Informers to bring their Action only in the proper County where the Offence was committed, yet it doth not extend to a Party grieved, but he may inform in what County he pleaſes. *Cro. Eliz.* 645. *pl.* 53.

What to do where an Information muſt be proſecuted at an Aſſizes or Seſſions for uſing of a Trade, *&c.*

5 **Eliz. cap.** 4.

Oath to be made.

21 **Jac. cap.** 4. **ſect.** 3.

G **Where** an Information is given by the Statute of 5 *Eliz. cap.* 4. *For uſing of a Trade, &c.* or any other Penal Statute, which Information muſt be proſecuted at an Aſſizes or Seſſions; the Informer muſt, upon the Filing of ſuch Information, make Oath before a Judge, That the Offence laid in ſuch Information was not committed in any other County, than that mentioned in the Information; and believes that the Offence was committed within a Year next before the filing of the Information. So alſo in Caſe of Actions of Debt by Bill, *&c.* 21 *Jac. c.* 4. *ſect.* 3. See in *ſect.* 5. Actions to be brought upon ſeveral Statutes therein mention'd may be brought in any County.

A **The** Defendant may in all theſe Caſes plead the General Iſſue.

The Defendant may plead the General Iſſue.

B **The** Statute of 31 *Eliz. cap.* 5. ſays, That no Informer can demand a Penalty upon a Penal Statute, but by Information exhibited within a Year after the Offence. Upon an Information, where a Penalty for three Years was demanded, it was held to be well enough for the King, but naught as to the Informer. *Cro. Jac.* 366.

The Informer muſt exhibit his Information within a Year.

31 Eliz. cap. 5.

A Penalty of three Years was demanded; it was well enough for the King, not for the Informer.

C **In** an Information upon 5 *Eliz. cap.* for exerciſing a Trade, *&c.* It was moved that the Informer ſhall have nothing; for one Moiety is given to the King, and the other to the Poor of the Corporation: This Conſtruction is always put upon the Statute, That the Moiety given to the King belongs to the Corporation, and the Informer is to have his Part ſtill. *Cro. Car.* 316. *pl.* 8.

How the Forfeiture ſhall be diſtributed upon a Recovery upon this Statute.

5 Eliz. cap.

A Moiety to the Poor.

A Moiety to the Informer.

D **See** the Duty of an Informer in proſecuting of a Suit upon a Penal Statute, and his Puniſhment if he abuſe it, 18 *Eliz. cap.* 5. This Act was made perpetual by an Act made 27 *Eliz. cap.* 10.

What an Informer muſt do in proſecuting upon a Penal Statute.

18 Eliz. cap. 5.
27 Eliz. cap. 10.
31 Eliz. cap. 5.

E **See** an Act made 31 *Eliz. cap.* 5. entitled, *An Act concerning Informers.*

F **For** preventing of malicious Informations in the King's Bench, *&c.* it is by an Act made 4 *&* 5 *W. & M. c.* 18. enacted, That the Clerk of the Crown in the King's Bench ſhall not, without expreſs Order made in open Court, exhibit, receive or file any Information for Treſpaſs, Batteries, and other Miſdemeanors; or iſſue out any Proceſs thereupon, before he ſhall have taken, or ſhall have delivered to him a Recognizance from the Perſon or Perſons procuring ſuch Information to be exhibited, with the Place of their Abode, Title or Profeſſion, to be enter'd into to the Perſon againſt whom ſuch Information is to be exhibited, in the Penalty of 20 *l.* conditioned that he will effectually proſecute ſuch Information, and abide by and obſerve ſuch Orders as the Court ſhall direct: Which Recognizance, the Clerk of the Crown, and every Juſtice of the Peace of any County, City, *&c.* (where the Cauſe of any ſuch Information ſhall ariſe) are thereby impower'd to take; and after the taking thereof by the Clerk of the Crown, or Receipt thereof from any Juſtice of the Peace, the ſaid Clerk of the Crown ſhall make an Entry thereof upon Record, and ſhall file a *Memorandum* thereof in ſome publick Place in the Office, that all Perſons may without Fee reſort unto it.

Who to exhibit, receive, or file Informations, and when.

4 & 5 W. & M. c. 18.

Penalty 20 *l.*

Conditioned to proſecute effectually.

Who are impowered to take it.

To be filed in the publick Office.

G **And** in Caſe any Perſon, againſt whom any ſuch Information ſhall be exhibited, ſhall appear thereunto and plead to Iſſue; and the Proſecutor ſhall not

After Appearance and pleading, the Proſecutor to procure it to be tried in a Year.

Where the Defendant ſhall have his Coſts.

Unleſs the Judge certifies.

What Remedy for the Coſts, if not paid in three Months.

at his own Coſts and Charges, within one Year next after Iſſue, procure the ſame to be tried; or if upon ſuch Trial a Verdict paſs for the Defendant; or in Caſe the Informer procures a *Nolle proſequi* to be enter'd there: In any of theſe Caſes, the Court of King's Bench is thereby authorized to award to ſuch Defendant his Coſts, unleſs the Judge, before whom ſuch Information ſhall be tried, ſhall, at the Trial of ſuch Information in open Court, certify upon Record, that there was a reaſonable Cauſe for exhibiting ſuch Information: And in Caſe the Informer doth not within three Months next after ſuch Coſts taxed, and Demand thereof made, pay the ſaid Defendant the ſaid Coſts, that then the Defendant ſhall have the Benefit of the ſaid Recognizance to compel the ſame.

This to extend only to ſuch Informations as the Maſter of the Office ſhall exhibit.

A **Note,** There is a Proviſo, that this Act ſhall not extend to any other Informations, than ſuch only as are or ſhall be exhibited by the Coroner or Attorney of the King's Bench, commonly called the *Maſter of the Crown-Office.*

All Pleas to Informations to ſtand good upon the Demiſe of the King.

B **That** upon the Demiſe of any King or Queen of this Realm, all Pleas to Informations in this Court ſhall ſtand and be good in Law, without calling the Defendant to plead again to the ſame, unleſs the Defendant deſire ſo to do, and requeſt the ſame of the Court.

The Court will not ſuffer more Matter to be put into an Information, than is in the Affidavit.

C **Where** an Information is ordered to be filed upon an Affidavit made for that Purpoſe, the Court will not ſuffer the Proſecutor to put any more, or other Matter into the Information, than what only is in his Affidavit. *Rex verſ. Lamb. Mich. 9 W. B. R.*

When to plead.

D **One** outlaw'd by Proceſs on an Information, if he comes in and reverſes the Outlawry, he muſt plead *inſtanter* to the Information. *Salk.* 371.

E **See** an Information in the Nature of a *Quo Warranto*, for admitting Perſons not Inhabitants to be Freemen. *Ibid.* 374.

F **And** note, the different Judgments on Writs of *Quo Warranto*, and Informations. *Ibid.*

G **See** of Inquiſitions and Informations in Office for the King. *Salk.* 12, 325, 514, 587, 660.

Deer-ſtealing.

H **For** Deer-ſtealing, if an Information be in due Time, the Conviction may be at any Time afterwards. *Salk.* 383.

Want of Summons aided.

I **And** in Summary Convictions an Appearance aids Want of Summons. *Ibid.*

Convictions.

K **Alſo** ſuch Convictions are to be taken ſtrictly againſt the Offender. *Salk.* 378.

Summary Convictions.

L **Therefore** Summary Convictions need not be laid *contra Pacem* and *juxta formam*, Statute is ſufficient. *Ibid.* & 383.

A **And** *Conſideratum quod convictus eſt* is enough without *forisfacies*. *Salk.* 378, 383.

Judgment.

B **And** that between ſuch a Day and ſuch a Day he kill'd three Deer, is well. *Ibid.* 378.

The Time.

C **And** that Oath was made *de Veritate premiſſorum* is enough. *Ibid.* 369.

The Oath.

D **How** Executions ſhall go on Affirmance of Convictions. *Vide Salk.* 369, 378.

Executions.

E **And** the Executor of the Owner may ſue Execution. *Salk.* 379.

The like.

F *Q.* **If** Conviction of Deer-ſtealing be pardon'd by Act of General Pardon. *Ibid.* 383.

Pardon.

G **On** 3 *&* 4 *W. & M. cap.* 5. a Seller of Deer Skins may be convicted. *Ibid.* and ſee *Salk.* 541.

Deer Skins.

H **See** an Information for ſending a Challenge to a Commiſſioner of the Land-Tax, and the Statute was miſrecited, and therefore on a Demurrer adjudg'd for the Defendant, tho' it would well have lain at Common Law, had not the Statute been recited. *Comber.* 477.

For ſending a Challenge.

I **See** concerning the Statute againſt malicious Informations. *Ibid.* 345.

K **Information** was granted for carrying a Child to *Jamaica*, tho' the Child pretended that he had no Friends, *&c.* *Skinner* 47.

For carrying Perſons out of the Kingdom.

L **In** an Information upon 35 *H.* 8. 17. for converting Wood Land into Arable and Paſture, it being ſaid generally, that he cut down Boſco's, *&c.* an Exception was taken that the Words of the Statute were not purſued, it not being ſhewn that the Land was ſet apart, and uſed for Wood Land, but the Exception was diſallow'd. But after the Information was quaſh'd, for ſaying the Place converted was two Furlongs from the Houſe, and not ſhewing where, or in what Pariſh the Houſe was. *Ibid.* 116.

For converting Wood Land into Arable and Paſture.

M **Where** *A.* and *B.* inform a Magiſtrate of a Fact that is puniſhable; yet if *A.* only brings the Information *Qui tam, &c.* *A.* only is the Informer within the Statute that is entitled to the Penalty. *Ibid.* 60.

Informer.

N **A Juſtice** of Peace is bound to adminiſter the Oath, if requir'd by the Statute of 22 *Car.* 2. and if he refuſes, an Information will lie; but he is not bound to commit upon that Oath. *Ibid.* 60, 61.

22 Car. 2.

O **Information** for making Mix'd Metals, and ſelling ſuch Metals for *Sterling*, tho' ſold but at a reaſonable Price is an Offence at Common Law. *Ibid.* 109.

For ſelling Mix'd Metals for Silver.

Time miſtaken.

A An Information upon antient Statute of continued Uſe and general Good, tho' the Time of making the Statute be miſtaken, yet the Information held to be good. *Skinner* 111.

Recuſancy.

B An Information againſt a Popiſh Recuſant Convict ſhould ſet forth the Conviction. *Skinner* 114.

Where ſeveral Offences, and to be ſeveral Penalties.

C An Information upon the Statute of 1 *Jac. cap.* 22. becauſe the Defendant *allocavit & ſigillavit vigint' coria tannat'*; *Anglice*, tanned Skins not being good and ſufficient; it was moved in Arreſt of Judgment, that this ought to be intended but one Offence, but ruled to be ſeveral Offences, and ſo ſeveral Penalties incurred. *Ibid.* 366.

Againſt an Alderman for not taking the Oaths.

D An Information againſt the Defendant for not taking the Oaths, and for acting as an Alderman after the Time incurred, within which he ought to have taken the Oaths; it appear'd, that the Seſſions in which he was to have taken the Oaths began the eighth, and was adjourned to the twenty-ſecond, the acting which was offer'd to be proved, was between the eighth and twenty-ſecond, *viz.* the eighteenth; and this was held not to be an Acting after the Time incurred for the next Seſſions, when it is required he ſhould take the Oaths, is the whole Time of the Seſſions. *Ibid.* 584, 585.

What was an Offence bordering upon High-Treaſon, and againſt the Common Law.

E An Information was exhibited againſt the Defendants for hiring a Ship to tranſport themſelves into *France*, there being War between *England* and *France*, with an Intent to aſſiſt the King's Enemies, and that they were taken going into the Ship; upon Motion in Arreſt of Judgment the Court ſaid, that this Offence borders upon High-Treaſon, and held it to be an Offence at Common Law, and fined the Defendants. *Ibid.* 637.

Againſt Overſeers of the Poor.

F Information was granted againſt the Overſeers of the Poor, for removing a ſick Perſon. *Mod. Caſes in Law and Equity* 326.

Libel.

G Information for a Libel laid in the Disjunctive (*ſcripſit ſeu ſcribi cauſavit*) is ill. *Mod. Caſes in Law and Equity* 328.

When to move.

H See where an Information againſt a Mayor, *&c.* for beating the Informer, mov'd the laſt Day but one of a Term, but denied a Rule to hang over a Magiſtrate's Head for a whole Vacation. *Ibid.* 337.

A **Informations** on Penal Statutes made before the Statute 21 *Jac.* muſt be brought in the proper County where the Fact was done, but not upon ſuch Penal Statutes which have been made ſince. 3 *Salk.* 199, 200.

Where to be brought.

B **Who** ſhall be a common Informer, who not. *Ibid.* 200.

Informer.

C **Of** an Information for ſelling live Cattle, not having kept them ſo many Weeks. *Ibid.* 199.

Selling live Cattle.

D **An** Information lies for licenſing a Narrative, *&c.* tho' by Order of the Houſe of Commons. *Comber.* 18.

E **It** lies in *B. R.* for exerciſing the Trade of a Brewer. *Ibid.* 62.

Brewer.

F **It** lies for going to Church arm'd with Piſtols. *Ibid.* 38.

Going arm'd.

G **It** lies for ſaying of a Juſtice of Peace, that he is a Buffle-headed Fellow, underſtands not the Law, and hath not done my Client Juſtice. (*Sed Quære.*) *Ibid.* 46, 65.

Juſtice of Peace.

H **It** lies for abſolving a Traytor at *Tyburn*, without a publick Confeſſion, *&c.* *Comberbach* 382, 383.

Abſolution.

I **It** lies for a ſcandalous Epitaph on Queen *Mary*. *Ibid.* 358.

Epitaph.

K *Quære*, **If** it lies for conſpiring and endeavouring to procure an Heir apparent to marry a Woman of ill Fame and no Fortune, and making him drunk to that End, *&c.* *Ibid.* 456, 457.

For marrying an Heir to an ill Woman.

L **Information** for Offences muſt be certain, and not accumulated; but a ſingle Offence made certain. *Carthew* 226. Several Extortions can't be joined in one Information. *Comber.* 193.

To be certain and ſingle.

M **Informations** brought by the Attorney-General in the Courts at *Weſtminſter* on Penal Statutes, are void. *Carthew* 467.

Attorney-General.

N **See** of an Information for ſcandalous Words ſpoken by the Defendant of a Juſtice of Peace. *Ibid.* 14.

Juſtice of Peace.

O **Information** muſt not be filed in the Crown-Office before the Informer hath given Security to anſwer the Coſts, if the Defendant is acquitted. *Ibid.* 503.

Security.

P **See** for an Information moved againſt a Juſtice of Peace, for ſending one to the Houſe of Correction without a Cauſe. *Mod. Caſes in Law and Equity* 45.

Againſt a Juſtice of Peace.

The like.

An Information againſt a Juſtice of Peace for not granting his Warrant denied, and the Proſecutor order'd to pay Coſts. *Mod. Caſes in Law and Equity* 337. A

Againſt a Burgeſs for not taking Oaths.

An Information lies againſt a Burgeſs for not taking the Oaths at the Time of Election. *Ibid.* 55. B

Quaſh'd.

An Information for prophane Curſing and Swearing, and a Conviction thereon quaſh'd. *Mod. Caſes in Law and Equity* 58. C

For taxing one illegally.

Information againſt a Mayor, *&c.* for taxing one who did not live in the Corporation. *Ibid.* 114. D

Againſt a County.

An Information was granted againſt the County, for not repairing a Bridge. *Mod. Caſes in Law and Equity* 119. E

For Bribery.

Information was granted againſt a Mayor for Bribery and ill Practice in electing an Officer. *Ibid.* 186. F

Information was moved for againſt a School-boy for aſſaulting his Maſter. *Mod. Caſes in Law and Equity* 283. G

Inhabitants of a Vill.

See Preſcription.

Inhabitants, who they are.

Inhabitants in a Vill are the Houſholders in the Vill. H

For what Inhabitants of a Vill may preſcribe.

Inhabitants of a Vill may preſcribe for an Eaſement, or for a Diſcharge; as to paſs over a Ferry without Toll. *Show. Rep.* 257. or to be diſcharged of Toll or Tithes, or in a *Modus Decimandi*; but cannot preſcribe to have an Intereſt. *Cro. Jac.* 152. *pl.* 16. I

Inhabitancy can't alledge an Uſage for an Inheritance.

An Uſage may be alledged by Reaſon of Inhabitancy to have an Eaſement, but not to have an Inheritance. *Cro. Eliz.* 363. *pl.* 25. or a Common. *Cro. Jac.* 152. *pl.* 16. K

A **Inhabitants** of a Vill are not bound to provide the Pillory and Tumbrel, but the Lord muſt do it, unleſs there be a Preſcription to the contrary. *Cro. Eliz.* 698. *pl.* 11.

The Lord, not the Inhabitants, muſt provide the Pillory and Tumbrel.

Inheritance.

Inheritance, See
Diſcent.
Eſtate.
Fee-ſimple.
Fee-tail.

B **THE Word Inheritance is not intended where a Man hath Lands or Tenements by Diſcent of Heritage; but alſo every Fee-ſimple, or Fee-tail, which a Man hath by Purchaſe, may be ſaid to be an Inheritance, becauſe his Heirs may inherit it.** Lit. Sect. 9.

Inheritance, what.

C **In** a Conveyance, no Words will tantamount to make an Inheritance where it is not ſufficiently expreſs'd: But in a Will it is different.

No Words but thoſe ſufficiently expreſs'd, will make an Inheritance in a Deed; but they will in a Will.

D **For** Inheritances, and who ſhall inherit. See Title **Diſcent,** and *Ratcliff*'s Caſe, 3 *Rep.* throughout.

Who ſhall inherit.

E **Before** the Statute *de Donis Conditionalibus*, there were no Inheritances, but Fee-ſimples, which were of two Sorts, *viz.* Abſolute and Conditional: And what the Conditional was, ſee the ſaid Statute *de Donis*. Then came that Statute, and made another Inheritance, *viz.* an Eſtate-tail, which is leſs than a Fee-ſimple was before; and leaves the Fee-ſimple in the Donor. *Walſingham*'s Caſe, 2 *Plow.* 562. *a.*

What Inheritances before the Statute *de Donis*, and what ſince **W.** 2. of Entails.

F **The** Conditional Eſtate was to a Man and the Heirs of his Body, which was a Fee: But a Condition annex'd to it, That if he died without Heir of his Body, the Land ſhall revert to the

What the Conditional Eſtate was before the Statute, and what Alterations are made by it.

Donor. 1 *Plow.* 235, 239. For which he had his Formedon in Reverter; but a Formedon in Remainder was given by the Statute *de Donis*; becauſe before the Statute *de Donis* it was a Fee, upon which there could be no Remainder: But if the Donee had Iſſue, he might alien and bar his Iſſue, and the Donor alſo. 1 *Plow.* 239, 240, 242.

A Grant to a Man and his Heirs Males is void, becauſe no ſuch Inheritance.

But ſuch a Deviſe is good, and why.

If the King by his Patent grants Lands and Tenements to a Man and his Heirs Male, this Grant is void; for the King is deceived in his Grant, becauſe there can be no ſuch Inheritance of Lands as the King intended to grant, for want of the Word *Body:* But in a Deviſe of Lands to a Man and his Heirs Male, this by Conſtruction of Law is an Eſtate-tail, the Law ſupplying the Words *of his Body.* *Co. Lit.* 27. *a.* A

Injunction.

Injunction, what.

Injunction is an interlocutory Decree out of the Court of Chancery or Exchequer; ſometimes to quiet a Poſſeſſion; ſometimes to ſtay Proceedings in Courts of Law, and Courts Chriſtian, upon Suggeſtion made, That if the Rigour of the Law ſhould take Place, it is againſt Equity and good Conſcience. B

Court of Chancery will commit an Attorney to the Fleet, if he proceeds after he is ſerved with an Injunction.

If an Attorney proceeds at Law after he is ſerved with an Injunction to ſtay Proceedings, upon Affidavit made in Chancery, and Interrogatories exhibited againſt him, to which he muſt anſwer upon Oath; and if it appears that he was duly ſerved with the Injunction, and hath proceeded afterwards contrary thereunto; the Court of Chancery will, upon a Report made by the Maſter, commit ſuch Attorney to the Fleet for his Contempt. C

Innuendo.

A THE Duty of an Innuendo is to aſcertain a Thing or Perſon mentioned before. 5 Mod 344. 4 Rep. 17. b.

What it is.

B A Man ſhall not be puniſhed for a Perjury by the Help of an *Innuendo*. 5 *Mod*. 344. *Godb*. 191.

The Help of an *Innuendo* ſhall not puniſh a Perjury.

C The Law will not allow Words to be inlarged by an *Innuendo*, ſo as to ſupport an Action on the Caſe for ſpeaking of them. *Hob*. 2, 6, 45. 1 *Vent*. 337. 5 *Mod*. 345.

The Law will not allow Words to be enlarged by an *Innuenda* to ſupport an Action.

D Where an *Innuenao* is good, and where not. 3 *Salk*. 225.

Vide Slander, Words, Declaration.

Inquiry and Inquiſition.

See { Felo de ſe.
Indictment.
Writ of Enquiry of Damages.

E INquiry is in the Caſe of a Judgment by Default, where only Damages and Coſts are to be recovered; then there iſſues out a Writ of Inquiry upon the Interlocutory Judgment. Inquiſition is upon an Extent and Writ of Elegit, or upon a Felo de ſe.

Inquiry and Inquiſition, what.

F The Court, upon Affidavit, will upon an extraordinary Occaſion, grant a new Writ of Inquiry, but it is often denied.

Where the Court will grant a new Writ of Inquiry.

Where the Court will not grant a new Writ of Inquiry, and where it will.

A The Plaintiff came into Court and ſhewed, That upon a Writ of Inquiry the Jury had given him too little Damages (and ſet forth in what) and prayed that the Writ might not be received, and that the Court would grant another Writ, but it was denied; becauſe the ſuing out of the Writ is his own Act: But ſometimes where exceſſive Damages are found, or any Miſdemeanor found in the Plaintiff, the Court will grant a new Writ. 2 *Leon.* Caſe 272.

The Court refuſed to abridge the Damages upon a Writ of Enquiry.

B The Court was moved to abridge the Damages given upon a Writ of Inquiry, by reaſon (as was alledged) of their being exceſſive: But the Court refuſed the Motion: 3 *Leon.* Caſe 200: But I have known it done upon Affidavit, and good Cauſe ſhewn to the Court.

Where the Coroner's Inquiſition may be travers'd.

C An Inquiſition upon a *Felo de ſe* may be travers'd, and he who claims the Goods may ſay, That *Queritur ſe colore inquiſitionis præd' gravitur inquietari & vexari & minus juſte quia dicit quod tempore mortis ſuæ & ante, &c. præd'* A. B. *fuit non Compos Mentis.* Ripley's *Caſe. Paſch.* 34 *Car.* 2. *B. R.*

An Inquiſition need not be very certain; and why.

D An Inquiſition upon a *Felo de ſe* need not to be very certain; becauſe it is only an Inſtruction, and to inform how Proceſs ſhall iſſue out for the King. *Lutw.* 1009.

Felo de ſe, his Goods are forfeited before Inquiſition.

E Goods of a *Felo de ſe* are forfeited before an Inquiſition taken. 1 *Lev.* 8.

Where in a Replevin there ſhall not be another Inquiry, by the Statute of 18 Car. 2. cap. 17.

F In a Replevin, if a Jury do inquire of the Value of the Cattle deſtreined, but not of the Rent due, they ſhall not have another Writ of Inquiry to ſupply it, upon the Statute of 18 *Car.* 2. *cap.* 7. 1 *Lev.* 255.

How the Proceedings are upon this Statute, 18 Car. 2. cap. 7. where the Plaintiff in Replevin becomes nonſuit before Iſſue joined.

G Where a Plaintiff in Replevin ſhall be nonſuit before Iſſue joined, in any Replevin removed, or depending in the Courts at *Weſtminſter*, the Defendant ſuggeſting in the Nature of an Avowry or Conuzance for Rent, to aſcertain the Cauſe of the Diſtreſs, the Court ſhall thereupon award a Writ of Inquiry to the Sheriffs touching the Sum in Arrear at the Diſtreſs, and the Value of the Goods diſtrein'd; and upon fifteen Days Notice of executing ſuch Writ of Inquiry, the Sheriff ſhall inquire of the Matters in the Writ by the Oaths of twelve Men; and upon the Return of the Inquiſition the Defendant ſhall have Judgment to recover his Arrears of Rent, if the Goods diſtrein'd amount to ſo much, together with his Coſts, and ſhall have Execution by *Fi. Fa.* or *Elegit.*

Jury to inquire.

Where he becomes nonſuit after Avowry or Cognizance, or the Vedict be againſt the Plaintiff.

H That if ſuch Plaintiff be nonſuited after Cognizance or Avowry, and Iſſue joined, or if the Verdict be againſt the Plaintiff, the Jurors impanelled to try the Iſſue ſhall, at the Defendant's Prayer, inquire

inquire of the Arrears and Value of the Goods diſtrein'd, and thereupon he ſhall have Judgment for his Arrears, or ſo much as his Arrears come to, together with his Coſts, and to have Execution by *Fi. Fa.* or *Elegit.*

A **So** alſo it ſhall be where Judgment is given for an Avowant, or for him who makes Cognizance upon a Demurrer.

So where Judgment is given for an Avowant.

B **Where** the Cattle diſtrein'd are not of the full Value of the Arrears, the Party may diſtrein again.

Where the Diſtreſs is not of the Value of the Arrears, the Party may diſtrein again.

C **Upon** a Writ of Inquiry executed in Treſpaſs, after *non ſum informatus*, or by *nil dicit*, the Plaintiff is not bound to prove the Property, but only the Value of the Goods, for that is the Matter requir'd by the Writ. *Cro. Jac.* 220. *pl.* 1.

Upon Inquiry in Treſpaſs the Value of the Goods, and not the Property, is to be inquired into.

D **Upon** a Writ of Inquiry upon a Judgment by Default upon an *Aſſumpſit* (if it be inſiſted upon) the Plaintiff muſt prove his Debt; for by the Judgment the Plaintiff is to recover: But the *quantum* is to be inquired into by the Jury; and if the Plaintiff proves nothing he muſt be content with a Penny, or ſome ſuch ſmall Matter of Damages.

How it is upon a Writ of Inquiry upon an *Aſſumpſit*.

E **A Writ** of Inquiry was executed the ſame Day it was returnable; and good.

Executed the Day of the Return.

F **The** Omiſſion of a Jury to inquire of Damages in a Nonſuit in Replevin, may be ſupplied by a Writ of Inquiry. 5 *Mod.* 77, 118, 119.

The Omiſſion of a Jury ſupplied by a Writ of Inquiry.

G **In** an Inquiry on a Nonſuit in Replevin the Omiſſion of the Jury to find Damages and tax Coſts, may be ſupply'd by a Writ of Inquiry. *Comb.* 11.

What to be ſupply'd by a Writ of Inquiry.

H **In** an Avowry for a Poor's Rate the Plaintiff, after Iſſue joined, was nonſuited at the Trial, and the Jury did not aſſeſs treble Damages, this may be ſupply'd by Writ of Inquiry. *Comb.* 344.

The like.

I **Note,** the Caption of an Inquiſition is not amendable *Secus* of Indictments. *Comb.* 70.

Caption.

K **When** the Inquiſition to be *pro Domino Rege & pro Corpora Com'.* Comb. 58.

How the Inquiſition to be.

L **An** Inquiſition taken by the Coroner *ſuper viſum Corporis.* Carth. 72.

Inquiſition.

M **Where** a Writ of Inquiry will or will not lie. *Vid. Mod. Caſes in Law and Equity.* 108.

Inquiry.

N **Where** it may be ſet aſide for ſmallneſs of Damages. *Ibid.* 196, 197.

Damages.

O **In** an Action for Damages the Jury of Inquiry may mitigate them, or find Part only. *Ibid.* 197.

Damages to be mitigated.

P **But** in *Aſſumpſit* on a Note for a Sum certain or in Covenant for paying a Sum certain, there the Jury cannot mitigate. *Ibid.* 196, 197.

Where not.

Before the Chief Juſtice.

A See a Writ of Inquiry granted to be executed before the Chief Juſtice, the Action being for 20000 *l.* *Mod. Caſes in Law and Equity.* 240.

To ſet aſide an Inquiry.

B A Motion was made to ſet aſide an Inquiry, becauſe executed before the Money became due. *Ibid.*

Coſts to be paid.

C A Rule was to ſet aſide the Execution of a ſecond Writ of Inquiry, becauſe the Coſts were not paid on ſetting aſide the firſt *Ibid.* 213.

Inrollment.

Inrollment, what.

D **Inrollment of a Deed is the Entering of it fairly upon the Records of one of the King's Courts of Record at Weſtminſter, or at the Quarter Seſſions of the Peace.**

An Inrollment of a Deed is either by Common Law, or by the Statute.
27 Hen. 8. cap. 16.

E An Inrollment of a Deed is either an Inrollment of it by the Common Law, or an Inrollment of it according to the Statute of Inrollments. *Trin.* 23 *Car.* 1. *B. R.* *Vide* the Statute 27 *H.* 8. *cap.* 16.

Inrollment of a Deed, how to be pleaded.

F If a Deed be inrolled by the Statute, and the Inrollment of that Deed is to be pleaded, it muſt be pleaded preciſely, that it was inrolled according to the Statute: *Trin.* 23 *Car.* 1. *B. R.* That the Plea may be certain, and that it may appear whether the Statute was purſued as it ought to be.

Deed inrolled the laſt Day of the ſix Months, good.

G If the Deed be inrolled the laſt Day of the ſix Months, it is a good Inrollment; for the Day of the Date of the Deed ſhall be taken excluſive. 5 *Rep.* *Clayton*'s Caſe.

Time of the Inrollment ſhall be tried *per Pais.*

H Although the Inrollment, or other Matter of Record, ſhall not be tried *per Pais,* yet the Time when the Inrollment was made ſhall be tried *per Pais.*

A **Before** the 20th Year of Queen *Elizabeth* it was not uſed to indorſe the Inrollments of Deeds upon the Back of them, as it is now uſed to be done. *Mich.* 23 *Car.* 1. *B. R.* But now it is conſtantly uſed, and to good Purpoſe, in reſpect of the more eaſy and readier Proof of the Inrollment, upon any Occaſion; for Credit is given to that Indorſement, without any farther Proof, as being made by a known Officer, and entruſted for that Purpoſe.

Inrollments of Deeds indorſed on the Back of them, and why.

B **An** Inrollment of a Deed ought to be made in Parchment, and recorded in Court for Perpetuity's Sake. *Paſch.* 24 *Car.* 1. *B. R.*

Muſt be in Parchment, and recorded in Court.

C **If** a Deed be loſt, yet the Inrollment is good Evidence, if it can be proved to a Jury by Circumſtances that there was ſuch a Deed: *Paſch.* 24 *Car.* 1. *B. R.* For the Loſs of a Record or Deed is not the Loſs of a Man's Title, if it can otherwiſe be proved.

The Inrollment is good Evidence of a Deed that is loſt.

D **An** Inrollment of a Fine, or other Conveyance, not being a Bargain and Sale, tho' acknowledged by the Parties themſelves, was not regarded without Proof of the Deed. 1 *Keb.* 117, *pl.* 23. See Title **Arreſt.**

Inrollment of a Fine not regarded without Proof of the Deed.

E **No** Eſtate, whereby any Inheritance or Freehold ſhall be made to any Perſon, ſhall paſs by any Bargain and Sale only, unleſs the ſame be inrolled within ſix Months, in ſome of the Courts mentioned in the Statute of 27 *H.* 8. *cap.* 16.

What Bargains and Sales in Fee are good.

27 **H.** 8. **cap.** 16.

F **Note,** Bargains and Sales for Years, in Conſideration of Money, have the ſame Operation by Bargain and Sale without Inrollment, as Bargains and Sales of Fee-ſimples have with Inrollment; the Statute extending only to Bargains and Sales made of Freehold or Inheritance, but ſays nothing of inrolling of Bargains and Sales for Years.

What Bargains and Sales for Years are good.

G **When** a Man by Deed of Bargain and Sale ſells a Reverſion, and before the Inrollment levies a Fine to the ſame Perſon; and afterwards the Deed is inrolled within the ſix Months, the Conuzee ſhall be in by the Fine, and not by the Deed inrolled. 4 *Rep.* 7. See *Cro. Eliz.* 917. *pl.* 8.

Bargain and Sale, Fine, Inrollment.

What ſhall operate.

H **Note,** The Day of the Date ſhall not be any Part of the ſix Months. *Hob.* 139, 140.

What ſhall be the ſix Months.

I **The** Inrollment ſhall have Relation to the Delivery of the Deed; but that is only to avoid mean Incumbrances made to a Stranger after the Delivery, and before Inrollment, but not to diveſt any legal Eſtate in the Interim made to the Bargainee. 4 *Rep.* 71. *a.*

To what the Inrollment ſhall have Relation, and to what Purpoſes.

K **Note,** It doth not veſt by the Statute of Inrollments, but by the Statute of Uſes. *Hob.* 136.

How it veſts.

L **The** Inrolling a Deed doth not make it to be a Record, but it thereby becomes a Deed recorded, and it ſhall operate by Virtue of the Statute of

What the Inrollment makes the Deed.

Inrollments. For there is a Difference between Matter of Record, and a Thing recorded to be kept in Memory; for a Record is the Entry in Parchment of judicial Matters controverted in a Court of Record, and whereof the Court takes Notice: But an Inrollment of a Deed is a private Act of the Parties concern'd, of which the Court takes no Cognizance at the Time of the doing it, altho' the Court give Way to it. *Mich.* 22 *Car.* 1. *B. R.* But an Inrollment of a Deed cannot be pleaded, without ſhewing of the original Deed. *Co. Litt.* 225. *b.*

It muſt be pleaded in what Court the Deed is inrolled.

A **The** Pleading of a Deed to be inrolled *debito modo juxta formam ſtatuti*, without ſaying in what Court, is naught. *Cro. Jac.* 291. *pl.* 9.

Where a future Intereſt of a Term will paſs without Inrollment or Attornment.

B **A Future** Intereſt of a Term will paſs by Bargain and Sale, without Inrollment or Attornment of the Term, which was granted by him who had the Fee; for then it will execute by the Statute of Uſes, otherwiſe there muſt be an Attornment: 2 *Rep.* 35. *b.* Until by the late Statute of 4 & 5 *Annæ*, for *The Amendment of the Law.*

4 & 5 **Annæ.**

What is a ſufficient Proof of a Deed.

C **The** Inrollment of a Deed, if it be acknowledged by the Grantor, is a ſufficient Proof of the Deed it ſelf upon a Trial. For every Deed before it is inrolled is to be acknowledged to be the Deed of the Party before a Maſter of the Court of Chancery (if inrolled in Chancery) or before a Judge of the Court where it is inrolled; and this is the Officer's Warrant for the Inrolling of it.

Where a Deed ought to be inrolled, and where not.

D **If** Lands be conveyed in a Deed for Money only, then the Deed muſt be inrolled, elſe the Lands will not paſs by the Deed: But if Lands be conveyed in Conſideration of Money paid, and alſo in Conſideration of natural Love and Affection to a Wife, Child, or Relation; there it is not neceſſary to inroll the Deed, but the Lands will paſs tho' the Deed be not inrolled: For in the former Caſe it is a meer Deed of Bargain and Sale, which paſſeth nothing without Inrollment; but in the latter Caſe the Land will paſs by Way of Uſe.

For the Inrolling and Pleading of all Grants of Deodands, &c. in the Crown-Office.

E **Grantees** from the Crown of Felons Goods, Deodands, and other Forfeitures, ſhall not be compelled to inroll their Charter or Grant in the Crown-Office; but only ſuch Part thereof as may expreſs the Grants of ſuch Felons Goods, Deodands, and Forfeitures; for which the Clerk ſhall receive twenty Shillings, and no more; and after ſuch Inrollment, it ſhall be pleaded to any Inquiſition. *Stat.* 4 & 5 *W.* & *M. cap.* 22.

Stat. 4 & 5 **W. & M.** cap. 22. ſect. 1.

Heir, Deviſee, or Purchaſer, muſt inroll.

F **An** Heir, Deviſee, or Purchaſer, muſt alſo inroll; or Proceſs will go out againſt them. *Ibid. Sect.* 3.

Made perpetual by 7 & 8 **W.** cap. 36. ſect. 4.

G **Note**, This was a temporary Act, but made perpetual by an Act made 7 & 8 *W. cap.* 36. *Sect.* 4.

A **Inrollment** makes an Eſtoppel as againſt an Obligation enroll'd, one is eſtopped to plead *Non eſt factum. Comber.* 247, 248.

Eſtoppel.

B **A Copy** of the Inrollment of a Deed. *Quære,* If Evidence at Common Law. *Ibid.*

Evidence.

C **A Deed** may be enroll'd without the Examination of the Party, upon Proof by Witneſs of its Delivery. *Salk.* 389.

What neceſſary to ſhew to obtain an Inrollment.

D **The** Party died before the Acknowledgment, yet the Deed was enrolled. *Ibid.*

Party dying.

E **And** where two are Parties, an Acknowledgment by one binds the other. *Ibid.*

The like.

F **A Rule** was made that all Deeds be acknowledged on the Plea-Side, and in open Court. *Salk.* 389.

Acknowledgment.

Inſimul computaſſent, See **Aſſumpſit.**

Inſpection, See
- **Age.**
- **Audita Querela.**
- **Baron and Feme.**
- **Error.**
- **Trial.**

Inſpeximus, See **Exemplification.**

Inſtitution.

See **Induction.**

G **If the Biſhop, upon Examination, finds the Clerk capable of a Benefice, he is to admit and inſtitute him. Admiſſion is nothing elſe but the Ordinary's Declaration, That he approves of the Preſentee to ſerve the Cure of the Church to which he is preſented: And Inſtitution is that Act by which he commits to him the Cure thereof.** Clergyman's Law 109.

Admiſſion, what.

Inſtitution, what.

By Inſtitution, the Church is full againſt all Perſons but the King.

A **By** the Inſtitution the Church is *plena & conſulta* againſt all Perſons, but the King; and as to Spirituals, *viz. Cura animarum*, Inſtitution makes him compleat Parſon: But as to the Temporalities, as Glebe, *&c.* he hath no Freehold till Induction. 4 *Rep.* 39.

Plenarty.

B **Without** any Induction is a Plenarty againſt a common Perſon. 3 *Salk.* 195.

Intendment & Intention.

Intendment, what.

C **Intendment ſhall ſometimes ſupply that which is not fully expreſſed.**

The Law doth not puniſh the Intention, except in High Treaſon.

D **The** Law doth not puniſh any one for the Intention to do Ill, if the Intention be not put in Execution, except it be in the Caſe of High Treaſon; for there Intentions, if they be clearly proved by Circumſtances, ſhall be puniſhed equally as if they had been put in Execution. *Trin.* 22 *Car. B. R.* But this is only in High Treaſon, and is done *in terrorem, ut pœna ad paucos, metus ad omnes*, to deter Men from that odious Offence, and of ſo high a Nature, being not acted againſt the Perſon of one ſole Perſon, but even againſt the whole Kingdom which would ſuffer by it were they put in Execution.

But one Pariſh ſhall be intended in a City, unleſs the Contrary be ſhewn.

E **There** ſhall not be intended to be more than one Pariſh in a City, altho' there be many, except the contrary be ſhew: *Trin.* 24 *Car. B. R.* For it is not of the Eſſence or Conſtitution of a City, to conſiſt of more Pariſhes than one; but there may be a City that hath but one Pariſh in it, as the City of *Rocheſter* in *Kent*, in which is only the Pariſh of St. *Nicholas*.

Bond to *J. S.* and no Perſon named in the *Solvendum*: It ſhall be intended that the Money is to be paid to the Obligee.

F **If** one be bound in an Obligation to *J. S.* in a certain Sum of Money, and in the *Solvendum* of the Bond, it is not expreſſed unto whom the Money ſhall be paid, the Law will intend it is to be paid to the Obligee: *Paſch.* 24 *Car. B.R.* Becauſe no other Perſon is particularly named unto whom the Payment ſhall be made; for it ſhall be intended the Money was to be paid to ſome Body, and there being no Perſon particularized to whom it ſhould be paid, it is but reaſonable it ſhould be paid to the Obligee. So it is, if there be no Time limited for the Payment of the Money, the Law ſayeth, it ought to be paid preſently.

A **A Court** which is pleaded (generally) to be held *ſecundum conſuetudinem*, ſhall be intended to be held according to the Common Law; but if it be pleaded to be held according to a Cuſtom, whereof the Memory of Man is not to the contrary, it ſhall be adjudged to be a Court held by Cuſtom: *Trin.* 24 *Car. B. R.* For a Cuſtom muſt be ſo particularly pleaded, but a general Cuſtom is Common Law.

A Court pleaded to be held generally *ſecundum conſuetudinem*, ſhall be intended to be held according to Common Law. Otherwiſe, if pleaded to be held according to a Cuſtom, whereof Memory, &c.

B **The** Intent of the Parties ſhall not be implied againſt the direct Rules of the Law: 5 *Feb. Hill.* 1649, *B. R.* For an Intent is not to be gueſſed at, and doth not certainly appear; but the Law is direct and plain, and therefore it ſhall not be preſumed the Parties did mean to do any Thing againſt Law, where their Intent doth not appear by expreſs Words; for the Law doth always make charitable Conſtructions of doubtful Matters.

The Intent of the Parties ſhall not be implied againſt the Rules of Law.

C **That** ſhe was not married, intended *tempore brevis.* 1 *Lev.* 41.

Intended not married, *tempore brevis.*

D **To** plead *modo ſubdit.* intends always ſo. *Id.* 122. Pleading, concludes *pet' judic'* omitting *dampna*; yet the Court gave Damages, becauſe incident, and *petit judicium* includes the whole. *Id.* 222. 2 *Lev.* 19.

To plead *modo ſubdit.* intends always ſo.

E **The** Law doth not in Conveyances of Eſtates admit of Eſtates to paſs by Implication regularly; but in Deviſes they are allowed with due Reſtrictions. *Vaugh.* 261, 262.

In Conveyances the Law admits not of Eſtates to paſs by Implication.

F **If** an Eſtate given in a Will be to the diſinheriting of the Heir at Law, it is not good, if ſuch Implication be only conſtructive, and poſſible; but an abſolutely neceſſary Implication; that is, That the Deviſee muſt have the Thing deviſed, or no other Perſon elſe can have it, is good. *Ibid.*

Where an Implication to the diſinheriting the Heir at Law may not be, and where it may.

G **A Man** deviſeth his Goods to his Wife, and that after her Deceaſe his Son and Heir ſhall have the Houſe where they are; this is a good Deviſe of the Houſe to the Wife by Implication, becauſe the Heir at Law is excluded by it; ſo that the Wife muſt have it by the Implication of the Deviſe, or no Body. *Ibid.*

A. deviſes his Goods to his Wife, and that after her Deceaſe his Son ſhall have the Houſe where they are: It is a Deviſe of the Houſe to the Wife by Implication.

H **Where** an indifferent Conſtruction may have two Intendments, the Rule is, To take it moſt ſtrongly againſt the Plaintiff. *Show. Rep.* 162.

Where there are two Intendments, what is the Rule.

I **If** a Plaintiff declares, That the Defendant became bound unto him *per Obligationem ſuam*, it ſhall be intended, that this Obligation was ſealed and delivered unto the Plaintiff; for unleſs he became bound it could be no Obligation.

Where Plaintiff declares Defendant became bound to him by Bond, it ſhall be intended to be ſealed and delivered.

How the Intention ſhall be as to the paſſing of Lands.

A Where a Man hath two Ways to paſs Lands, and both of theſe Ways are by the Common Law, and he intends to paſs them by one of theſe Ways; yet, *ut res magis valeat*, it ſhall paſs by the other: But where a Man may paſs Lands either by the Common Law, or by raiſing of an Uſe, and ſettling of it by the Statute; there in many Caſes it is otherwiſe: Which Caſes ſee in *Co. Litt.* 49. *a.*

Deeds.

B The Intention of the Parties ought to govern in Deeds. *Carthew* 23, 39, 120.

Verdict.

C Where a Thing ſhall be intended after a Verdict. *Ibid.* 131.

Uſes.

D Conveyance by Way of Uſe ſhall be guided by the Intention of the Parties. *Ibid.* 343.

Trial and Verdict.

E Where after a Verdict ſuch Proof ſhall be intended to be made at the Trial as might ſupport the Action. 3 *Salk.* 195.

Wills.

F Where collateral Proof ſhall be admitted to ſhew the Intent of the Teſtator. *Mod. Caſes in Law and Equity* 9.

Interrogatories.

Interrogatories, what.

G **Interrogatories are particular Queſtions demanded of Witneſſes, brought in to be examined, eſpecially in the Court of Chancery.**

A Perſon order'd to be examined upon Interrogatories, ought to attend the Maſter of the Office.

H One who is by the Rule of the Court to be examined upon Interrogatories in the Crown-Office, ought to attend the Maſter of the Office, who is to examine him, within four Days after the Interrogatories are put in for him to be examined upon, (*Mich.* 22 *Car.* 1. *B. R.*) for the ſpeedier Diſpatch of Juſtice; and he is not bound to attend before.

Contempt.

I Of Interrogatories on Contempt. *Vide Comber.* 63.

The Time of filing.

K The four Days for putting in Interrogatories, is where the Parties are in Term. *Ibid.* 8.

Recognizance.

L Where the Party is to anſwer Interrogatories on *Recognizances*, and where in *Vinculis*. *Ibid.* 448.

Inteſtates Eſtates.

See { **Adminiſtrator.**
Adminiſtration.
Diſtribution.

A **Inteſtates Eſtates are the Goods and Chattels of Perſons dying Inteſtate.**

Inteſtates Eſtates, what.

B **See** in Title **Adminiſtrator**, *An Act for the better ſettling of Inteſtates Eſtates*, made 22 & 23 *Car.* 2. *cap.* 10. and which is explained by a Clauſe in another Act made 29 *Car.* 2. *cap.* 3. intitled, *An Act to prevent Frauds and Perjuries*, continued for ſeven Years, by an Act made 30 *Car.* 2. *cap.* 6. and afterwards the ſaid Act 30 *Car.* 2. *cap.* 6. was, by an Act made 1 *Jac.* 2. *cap.* 17. made perpetual; wherein there is a Proviſo, That no Adminiſtrator ſhall be cited to any of the Courts in the laſt Act mention'd, to render an Account thereof, unleſs at the Proſecution of ſome Perſon or Perſons in Behalf of a Minor, having a Demand out of ſuch Perſonal Eſtate, as a Creditor or next of Kin; nor be compellable to account before any the Ordinary, or Judges, in the ſaid laſt Act impowered and appointed to take the ſame, otherwiſe than as aforeſaid.

Act of 22 & 23 **Car.** 2. cap. 10. for the ſettling of Inteſtates Eſtates, and making of Diſtribution.

29 **Car.** 2. **cap.** 3.

30 **Car.** 2. **cap.** 6.

1 **Jac.** 2. **cap.** 17.

At whoſe Proſecution an Adminiſtrator ſhall be cited to anſwer.

C **That** if after the Death of a Father, any of his Children ſhall die Inteſtate, and without Wife or Children, in the Life of the Mother, every Brother and Siſter, and their Repreſentatives, ſhall have an equal Share with her.

How Diſtribution to be made, where after the Death of a Father, any of his Children die Inteſtate.

D **That** the Clauſe in the ſaid Act for ſettling Inteſtates Eſtates, wherein it is provided, That nothing therein contained ſhould any Ways prejudice or hinder the Cuſtoms obſerved in *London* and the Province of *York*; was never intended, nor ſhall be conſtrued to extend to ſuch Part of any Inteſtate's Eſtate, as any Adminiſtrator, by

Not to prejudice the Cuſtoms of *London* and *York*.

Virtue only of being Adminiſtrator, by Pretence or Reaſon of any Cuſtom, may claim to have, to exempt them from Diſtribution; but that ſuch Part in the Hands of ſuch Adminiſtrator ſhall be ſubject to Diſtribution, as in other Caſes in the ſaid Act. See for the firſt Act in Title **Adminiſtrator.**

Half-Blood ſhall have Diſtribution.

A Siſter of the Half-Blood ſhall have Diſtribution. *Show. Rep.* 1. A

One dies inteſtate before Diſtribution; his Share goes to his Executor.

One dies inteſtate: *A.* and *B.* are his next of Kin. *A.* dies before Diſtribution; his Part ſhall go to his Executor. *Show, Rep.* 25. B

How and amongſt what Perſons Diſtribution ſhall be made.

In making of Diſtribution of Inteſtates Eſtates amongſt Collaterals, the Civil Law and the Practice of the Eccleſiaſtical Courts have conſtantly obſerved theſe two Rules. C

1. *Repræſentatio in filiis fratrum & ſororum tantum locum habet, ad ulteriores vero collaterales non extenditur*, (*viz.* only to Brothers and Siſters Children, and no further.) D

See the Argument of my Lord Ch. J. *North* in *Raym.* 496, being an Expoſition of the Statute of Diſtribution.

2. **In** Caſe there be no Brothers and Siſters, nor Brothers and Siſters Children, then *vocantur ad ſucceſſionem reliqui, collaterales quicunq; in gradu ſunt proximiores, remotioribus excluſis, ita quod infallibiliter ſemper prior in gradu ſit potior in ſucceſſione:* Whereby Repreſentatives muſt be out of Doors; the next of Kin, whether one or more, being only admitted to a Diſtribution. *Raym.* 506. E

How Diſtribution to be where there is a Mother and one Child.

1 **Jac. 2. cap. 17.**

A Man dies, leaving a Wife and one Child, the Wife is intitled to one Third, and the Child to the other two Thirds of the Perſonal Eſtate. *Per Pollexfen*, 3 *Mod. Rep.* 63. See 1 *Jac.* 2. *cap.* 17. F

Intruſion.

See **King.**

A Intruſion is, firſt, When the Anceſtor died ſeized of an Eſtate of Inheritance after an Eſtate for Life, and the Tenant for Life dies; and between his Death and the Entry of the Heir a Stranger intrudes. Co. Litt. 277. a.

Intruſion, what.

B Secondly, He that enters upon the King's Lands and takes the Profits, is an Intruder. Ibid.

C See an Act made 21 *Jac.* 1. *cap.* 14. intitled, *An Act to admit the Subject to plead the General Iſſue in Informations of Intruſion, brought on Behalf of the King, and to retain his Poſſeſſion till Trial*: This is, where the King hath been out of Poſſeſſion, and not received the Profits for twenty Years.

The Act to plead the General Iſſue to Informations of Intruſion, and keep the Poſſeſſion till Trial.

D That where an Information of Intruſion will fitly lie, no *Sci. fa.* ſhall be brought, whereby the Subject ſhall be forced to plead ſpecially.

No *Sci. fa.* where this Information lies.

E Before Office found, he who occupies the Land ſhall not be ſaid to be an Intruder; for Intruſion cannot be but where the King is actually poſſeſs'd, which is not before Office: But he is intitled to the meſne Profits after the Tenant's Eſtate ended. *Moor. Caſe* 440, *fol.* 295.

Where a Man ſhall be ſaid to be an Intruder.

What ſhall be Intruſion.

When intitled to the meſne Profits.

F Where Lands concealed and *injuſte detent.* from the Crown are granted by Patent, it is void; for no Lands can be *injuſte detent.* from the Crown, but the Profits may. *Moor. fol.* 417.

The Profits may be *injuſte detent.* from the Crown, but not the Lands.

Joinder in Action and in Deeds.

See **Abatement.**
Releaſe.
Summons and Severance.

Joinder in Action, what.

A **Joinder in Action is where ſeveral Perſons are concerned equally, and the one cannot bring the Action without the other: There they muſt all join.**

Covenant to two not to do a Thing: One may bring an Action.

B **A Covenant** to two not to do a Thing without their Conſent: One of them may bring the Action for his particular Damage, otherwiſe one might be remedileſs by the Act of the other. 2 *Mod.* 82.

Treſpaſſes are ſeveral, *Aſſumpſits* joint.

C **Every** Treſpaſs done by many is ſeveral by each of them; but every *Aſſumpſit* is joint, and not ſeveral. 2 *Leon. Caſe* 77.

One ſhall bind his Companion; but cannot ſue without him.

D **In** all Perſonal Things, where two are chargeable to two, the one may ſatisfy it, and the one may accept of Satisfaction, and bind his Companion; and yet one cannot have an Action without his Companion, nor both only againſt one. 2 *Leon. Caſe* 100, *fol.* 77.

Where the Special Matter muſt be in the Declaration.

E **Where** one Man hath two Parts of the Rent, and another hath one Part, and they join in the Action, they ought to ſet forth all the Special Matter. 2 *Leon. Caſe* 148.

Where two are bound, and Judgment againſt one who is ſuffered to eſcape, the other is ſued and pleads this, it is no Plea; and why.

F **Two** are bound in a Bond, and Judgment and Execution is againſt one who is taken, and ſuffered by the Gaoler to eſcape; the other is ſued, and pleads this Matter, and held to be no Plea; for the Eſcape of the Priſoner, tho' by the Gaoler's Permiſſion, is no Diſcharge of the Debt. *Cro. Jac.* 531. *pl.* 14, 532.

A **Actions** of Trover and *Aſſumpſit* ought not to be joined. *Carthew* 189. 3 *Salk.* 202, 204.

Trover and *Aſſumpſit*.

B **Treſpaſs** and Treſpaſs upon the Caſe cannot be joined. *Carthew* 436.

Treſpaſs and Caſe.

C **A Special** Action on the Caſe, and an *Aſſumpſit*, are inconſiſtent. *Ibid.* 189.

Special Action and *Aſſumpſit*.

D **What** cannot be joined in Actions. See *Carth.* 235.

Joinder in Actions.

E **Tenants** in Common may join in an Action of Debt for Rent, or in an Action of Covenant. *Ibid.* 289, 290.

Tenants in Common.

F **A Grant** of Annuity of 100 *l.* to five Perſons, (*viz.*) to each of them 20 *l.* apiece, they cannot join, becauſe this is a ſeveral Rent. *Carthew* 340.

Grantees of a Rent.

G **Coparceners** muſt join, for they cannot ſever, in an Avowry for Rent. *Ibid.* 364.

Coparceners.

H **Where** two or more have Joint-Damages they may join in the Action. 3 *Salk.* 203.

Joint-Damages.

I **What** Perſons may join and be joined in Actions. 3 *Salk.* 202, 203.

Joinder of Perſons in Actions.

K **What** Actions can or cannot be joined. *Ibid.* 203.

What Actions.

Jointenants.

See
- **Acount.**
- **Attornment.**
- **Deviſe.**
- **Partition.**
- **Tenants in Common.**

L **JOintenancy is where two Men come to any Lands and Tenements by one joint Title, as if a Man gives Lands to two Men and their Heirs; it may be alſo of Goods and Chattels. Tenancy in Common is where two Men have Lands by ſeveral Titles, or where a**

Jointenancy, what.

Tenancy in Common, what.

Feoffment or other Conveyance is made to two, Habend' one Moiety to one, the other Moiety to the other.

Jointenants and Tenants in Common of Inheritance may ſue out a Writ of Partition. 31 H. 8. cap. 1.

So may Jointenants for Lives or Years. 23 H. 8. cap. 32.

A **Jointenants** or Tenants in Common of any Eſtate of Inheritance in their own or their Wives Rights, are compellable by Writ *de participatione facienda*, to be deviſed in the Court of Chancery, in like Manner as Coparceners have been compelled; and alſo, that each of them and their Heirs may have Aid of the other or his Heirs; and now Jointenants for Lives or Years may have it.

How they ſhall preſent to an Advowſon after a Partition. 7 Ann.

B **How** Jointenants ſhall preſent to an Advowſon by the Statute of 7 *Annæ*, after a Partition made between them to preſent by Turns. See in Title **Partition.**

Jointenancy not to be given in Evidence, but muſt be pleaded.

C **Two** Jointenants; one brings Treſpaſs againſt a Stranger, the Defendant pleads Not guilty; the Defendant ſhall not give the Jointenancy in Evidence, but he ought to have pleaded this in Bar. *Moor. Caſe* 660. But *quære*, if it ought not to have been pleaded in Abatement.

A Deed of Truſt to pay the Profits to three equally, is a Tenancy in Common.

D **A Deed** of Truſt to pay the Profits to three in equal Manner, and to convey the Inheritance in like Manner, is a Tenancy in Common: Becauſe, as well in a Deed of Truſt as a Will, the Intent is to be conſidered. 1 *Lev.* 232. See Title **Deviſe.**

Three Jointenants of Goods; two bring the Action, they ſhall recover two Parts in three: But the Defendant might have pleaded in Abatement.

E **Three** Jointenants of Goods, two bring the Action. The Defendant pleads Not guilty; they ſhall recover two Parts in three: But the Defendant might have pleaded the Jointenancy in Abatement. 2 *Lev.* 113.

A Corporation cannot be jointly ſeiſed with another.

F **A Corporation** cannot be jointly ſeiſed with another. 2 *Lev.* 12.

A Man deviſes to his two Daughters in Fee: This is a Jointenancy.

G **A Man** hath two Daughters, and deviſes to them and their Heirs: Here the Quality of the Eſtate is altered in them, and they are become Jointenants.

One Jointenant, &c. may have an Action of Account againſt the other.

4 & 5 Ann.

H **Actions** of Account may be brought by one Jointenant, and Tennant in Common, his Executors and Adminiſtrators, againſt the other, as Bailiff, for receiving more than comes to his juſt Share and Proportion; and againſt the Executors and Adminiſtrators of ſuch Jointenant, or Tenant in Common, *per* Statute 4 & 5 *Annæ*. See Title **Account.**

A **Two** Jointenants of a Term, one grants his Part to the other; nothing paſſes: For as a Grant it cannot paſs; for as he cannot enfeoff his Companion, (18 *E.* 4. 27. *pl.* 22.) no more can he veſt any Thing in him by his Grant; for he cannot grant to him that which he had before. 1 *Leon. Caſe* 383. But one may releaſe to the other.

One Jointenant cannot grant to the other, but he may releaſe to the other.

B **One** Jointenant cannot bring an Action of Treſpaſs againſt his Companion. 3 *Leon. Caſe* 352.

One Jointenant cannot have Treſpaſs againſt another.

C **Two** Jointenants for Life; one grants his Eſtate for the Life of his Companion; it is a Forfeiture: For it is a Severance of the Jointure, and then a Leaſe for the Life of another. 4 *Leon. Caſe* 361.

Two Jointenants for Life; one grants his Eſtate for the Life of his Companion, it is a Forfeiture; and why.

D **Two** Jointenants of a Term, one grants Parcel of it to a Stranger; by this the Jointure of all is ſevered. *Cro. Eliz.* 33. *pl.* 16.

A Grant of Part by one Jointenant is a Severance of the Whole.

E **Two** Jointenants for Life; one makes a Leaſe for Years, to begin after his Death; it is good to bind his Companion: So it is if he makes a Leaſe immediately for Years: So it is where he makes a Leaſe to begin at a future Day. *Cro. Jac.* 91. *pl.* 19. So after his Deceaſe. *Moor. Caſe* 514.

Two Jointenants for Life; one leaſes for Years to commence after his Death, or immediately, or at a future Day; and good.

F **A Deviſe** to two jointly and ſeverally is a Jointenancy, becauſe coupled with the Word *Jointly*. *Poph.* 52. See more in Title **Deviſe**.

A Deviſe to two jointly and ſeverally is a Jointenancy; and why.

G **One** Jointenant of a Manor grants a Copyhold; it is void, becauſe he is not *Dominus pro tempore*. 1 *Leon. Caſe* 217.

Cannot grant a Copyhold; and why.

H **One** Jointenant may make a Leaſe at Will to the other. *Cro. Eliz.* 314. *pl.* 7.

One Jointenant may leaſe at Will to the other.

I **Three** Jointenants for Life; one purchaſed the Reverſion by Fine: The Queſtion was, Whether the Jointure was diſſolved? And adjudg'd that it was. And the Diverſity was taken, That where the Reverſioner comes to the Freehold, the Jointure is deſtroyed; but where the Freehold comes to him in Reverſion and another, it is otherwiſe. *Cro. Eliz.* 470. *pl.* 28. 743.

Three Jointenants for Life; one purchas'd the Reverſion by Fine, the Jointure is diſſolved.

K **A Leaſe** is made to three for their Lives; Proviſo that the Second ſhall not occupy during the Life of the Firſt, nor the Third during the Life of the Second: It came to be a Queſtion, Whether this Proviſo ſevered the joint Eſtate, and made them take in Remainders, or that it continued joint? And adjudged that it continued joint, and that the Proviſo was void. *Cro. Eliz.* 89. *pl.* 13 & 107.

A Leaſe to three for their Lives; Proviſo that the Firſt ſhall take firſt, the Second next; the Proviſo adjudg'd void, and that they ſhall take jointly.

One Jointenant in Fee leaſes for Years: It is no Severance.

A **Two** Jointenants in Fee; one leaſes for Years; it is no Severance of the Jointure. *Lutw.* 729, 1173.

One Jointenant in Fee levies a Fine of the Whole; it is no Ouſter of his Companion, but it is a Severance of the Jointure.

B **Two** Jointenants in Fee; one levies a Fine of the Whole; this amounts not to an Ouſter of his Companion, but it is a Severance of the Jointure. *Mod. Caſes* 45.

How one Jointenant may avow for Rent.

C **One** Jointenant cannot avow for Rent, without making himſelf Bailiff to his Companion. *Lutw.* 1211.

One Jointenant may diſtrain, but not bring Debt alone.

How he muſt avow.

D **One** Jointenant may diſtrain alone, (but cannot bring Debt alone) but then he muſt avow in his own Right, and as Bailiff to the other; and the Return muſt be adjudged to him in his own Right, and as Bailiff to the other to whom he is accountable. 5 *Mod.* 73, 150, 151.

One Jointenant makes a Leaſe for Life: The Freehold is ſevered.

And the Reverſion alſo.

How it ſhall be where one Jointenant leaſes for Years to a Stranger.

E **If** there be two Jointenants in Fee, and one makes a Leaſe for Life to a Stranger, the Freehold is ſevered from the Jointure, and the Reverſion is ſevered alſo: But where one Jointenant leaſes for Years to a Stranger, reſerving a Rent, the Leſſor hath a Reverſion expectant upon the Term; and the other Jointenant hath a Freehold and Inheritance in Poſſeſſion; and yet the Jointenure of the Inheritance is not ſevered; and he ſhall have the Reverſion by Survivorſhip, but not the Rent; becauſe he claims by Title Paramount. *Lutw.* 1173. See 729.

Attornment for Part.

F **Attornment** for Part is Attornment for the Whole. 2 *Rep.* 67. *b.*

One Jointenant attorns, veſts the Reverſion in the Whole.

What Acts one Jointenant may do.

G **By** the Attornment of one Jointenant for Life, the entire Reverſion is veſted in the Grantee of the Reverſion: And what Acts one Jointenant may do to bind his Companion, ſee *Tooker*'s Caſe, 2 *Rep.* 66. *b.* 67, 68.

Jointenants.

H **Reſolutions** upon Jointenancies and Tenancies in Common. 3 *Salk.* 204.

What makes a Jointenancy.

I **Surrender** of a Copyhold to the Uſe of his five Children, equally to be divided, and to their Heirs, makes a Jointenancy. *Salk.* 226, 391, 392. 3 *Salk.* 206.

Diſtreſs.

K **One** Jointenant may diſtrain, but he cannot avow alone, becauſe that goes to the Right. 3 *Salk.* 207. *Carthew* 329.

Survivorſhip.

L **Where** there ſhall be no Survivorſhip amongſt Jointenants. *Carthew* 16.

Partition.

M **Jointenants** of an Advowſon may make Partition by Deed of Covenants between themſelves. *Carthew* 505.

A **Where** there are Joint-Defendants, one of them cannot plead Miſnomer of the other. *Carthew* 96.

Miſnomer.

B **An** Action founded upon a Tort may be joint and ſeveral, like Treſpaſs. *Ibid.* 171, 295.

Torts.

C **A Grant** of 100 *l.* Rent, to five, equally to be divided to hold to them, *viz.* 20 *l.* to each, *&c.* they are Jointenants. *Salk.* 390.

Grantees of a Rent.

D **So** a Grant to *A.* and *B. habend'*, one Acre to *A.* and the other to *B.* they are Jointenants. *Ibid.* 391.

E **One** Tenant in Common may diſſeiſe his Companion, *i. e.* by an actual Ouſter. *Salk.* 392.

Diſſeiſin.

F **Tenants** in Common may be by Preſcription, but not by Wrong. *Ibid.* 423.

Preſcription.

G **They** cannot join in an Ejectment. *Salk.* 2. 423.

Ejectment.

H **Nor** in an Avowry. *Salk.* 390. *Comber.* 2. 347.

I **But** Coparceners muſt join in an Avowry, *&c.* *Salk.* 390. *Vide* 187.

Coparceners.

K **See** the Difference between Coparceners and Tenants in Common, as to pleading a ſole Seiſin. *Salk.* 629, 630.

Coparceners and Tenants in Common.

L **The** Poſſeſſion of one Jointenant is Poſſeſſion of the other, ſo as to prevent the Statute of Limitations. *Salk.* 285.

Statute of Limitations.

M **And** if one Jointenant levies a Fine, tho' it ſevers the Jointure, it does not ouſt his Companion. *Ibid.* 286.

One levying a Fine.

N **One** Jointenant of Chattels can't bring Trover againſt his Companion, but may againſt a Stranger. *Ibid.* 290.

Trover.

O **Where** one Coparcener will take Advantage of a Forfeiture, and the other not. *Qu.* If there ſhall be an Apportionment. *Salk.* 187.

Apportionment.

Jointreſs.

A Jointreſs, what.

27 H. 8. cap. 10. Sect. 6.

A Jointreſs is ſhe who hath an Eſtate made to her by her Husband for the Term of her Life, if ſhe ſurvives him, the ſame to commence immediately upon his Death, and is mentioned in 27 H. 8. cap. 10. And if made after Marriage, ſhe may wave it preſently after his Death, and demand her Dower: But if made before Marriage, ſhe cannot. Sect. 9. A

A Jointreſs within the Statute of 11 H. 7. cap. 20. commits a Forfeiture, the Heir may enter preſently.

A Jointreſs of the Promotion of her Husband, within the Statute of 11 *H.* 7. *cap.* 20. ſuffers a Recovery covinouſly to bar her Heir: This is within the Statute, and the Heir may enter preſently, and is not bound to ſtay till their Death. 1 *Plow.* 42, to 60. B

A Fine and Render for a hundred Years is a Forfeiture.

Where ſhe accepted of a Fine, and rendered back the Lands for a hundred Years: This was adjudged a Forfeiture; for by the ſame Reaſon that it is for a hundred Years, it may be for a thouſand Years. 2 *Leon.* Caſe 206. C

A Feme-jointreſs diſcontinues, Reverſioner or Remainder-man may enter.

11 H. 7. cap. 20.

A Feme Tenant in Tail within the 11 *H.* 7. *cap.* 20. makes a Diſcontinuance; he in Reverſion or Remainder may enter. 3 *Rep.* 51. *b.* D

What Jointures are not within the Statute of 11 H. 7. cap. 20.

Where the Eſtate ſettled for a Jointure comes from the Anceſtors of the Wife, and is not of the Purchaſe of the Husband, or his Anceſtors, it is not within the Stat. of 11 *H.* 7. *cap.* 20. E

Thoſe Acts to be done by ſuch Jointreſs muſt be to the Prejudice of the Heir at Law.

11 H. 7. cap. 20.

Where no Inheritance is reſerved to the Husband and his Heirs, but the Eſtate is limited to the Feme for Life, or in Tail, the Remainder to a Stranger: This is not a Jointure within 11 *H.* 7. *cap.* 20. tho' made by the Husband or his Anceſtor; becauſe it is no Prejudice to the Heir, for whom only this Proviſion is made. *Cro. Eliz.* 2. F

A **The** Intent of the Act of 11 *H.* 7. *cap.* 20. is to reſtrain Women from diſcontinuing by Warranty and Recovery, in Bar of the Heir: But where the Heir in Tail conveys away the Land, and the Jointreſs releaſes or confirms with Warranty, this Warranty is not reſtrained, it being only to perfect and coroborate the Eſtate made by the Tenant in Tail, and ſhall be intended to be for the Benefit, not Prejudice, of the Heir. 3 *Rep.* 60. *b.*

What Warranties are intended to be reſtrain'd by the Statute.

B **Where** an Eſtate is ſettled upon a Woman in Conſideration of Money paid, and alſo of a Marriage to be had, the Marriage ſhall be look'd upon to be the Conſideration. *Cro. Jac.* 474.

Where the Conſideration is Money and Marriage.

C **Alſo**, where the Huſband is Tenant for Life, Remainder to his Wife in Tail, Remainder to himſelf in Fee; he, together with his Wife, makes a Feoffment, and then they afterwards levy a Fine to the Feoffee, and the Iſſue enters: This is no Forfeiture, becauſe the Huſband and Wife joined. *Cro. Jac.* 474.

Where Wife, Tenant in Tail, Remainder to the Huſband in Fee, levies a Fine.

D **A Jointreſs** within the Statute makes a Leaſe for forty Years, if ſhe ſo long lives, at a Pepper-Corn Rent, and then levies a Fine *ſur Conuzans de Droit, &c.* The Heir enter'd within five Years, and brought his Ejectment: And upon a Special Verdict this Matter was found, and alſo that the Leaſe was in Truſt for herſelf. The Court adjudged this to be a good Leaſe, untouch'd by the Fine or Statute: 22 *Car.* 2. in *B. R. inter Waters & Rumſey.* Had it been a Leaſe for Life, tho' not warranted by the Statute, it had been no Forfeiture. 3 *Rep.* 50. *b.* *Cro. Jac.* 688, 689.

A Jointreſs leaſes for forty Years, if ſhe ſo long lives, and then levies a Fine; this is no Forfeiture.

E **An** Eſtate in Fee-Simple, conveyed to a Woman for her Jointure, is not any Jointure, within the Statute of 11 *H.* 7. *cap.* 20. which Act was never extended to Lands granted to a Woman in Fee; for to reſtrain ſuch an Eſtate, which in its Nature is alienable, is repugnant, and againſt the Rules of Law: But an Eſtate in Fee conveyed to a Woman for her Jointure, and in Satisfaction of her Dower, is a Jointure within the Statute of the 27 *H.* 8. *cap.* 10. of Uſes. 4 *Rep.* 3. *a. b.*

Where an Eſtate in Fee ſhall not be within the Stat. 11 **H.** 7. **cap.** 20.

But it ſhall be within 27 **H.** 8. **cap.** 10.

F **An** Eſtate ſettled upon a Jointreſs before Marriage, which ſhall bar her of her Dower, by 27 *H.* 8. *cap.* 10. muſt have theſe following Qualifications:

The ſeveral Qualifications of a Jointure to bar Dower, by the Statute of 27 **H.** 8. **cap.** 10.

G **It** muſt be at the leaſt an Eſtate for Life. 3 *Rep.* 2. *a.*

H **It** muſt commence immediately after the Huſband's Death. *Ibid.*

I **An** Eſtate for Life upon Condition is a Bar, if the Wife accepts it; becauſe that is an Eſtate for Life. 3 *Rep.* 2. *b.*

K **So** if the Eſtate be made *durante Viduitate*, it is good. 3 *Rep.* 3. *a.*

A If it be made before Coverture ſhe cannot wave it; but if after it, ſhe may.

B If Lands are conveyed to her before Marriage in Part of her Jointure, and after Marriage other Lands in full, ſhe ſhall take her firſt Jointure-Lands and Dower together, becauſe ſhe had not her full Jointure. 3 *Rep.* 3. *a.*

C If a Woman be evicted out of Part of her Jointure ſhe ſhall have her Dower *pro tanto*. *Ibid.*

She cannot have both Jointure and Dower.

D Where a Woman conceals her Jointure and brings Dower and recovers it, then ſets up her Jointure; here ſhe ſhall be barr'd of her Jointure. 3 *Rep.* 5. *a. b.*

Journeys Accounts.

A Writ by Journeys Accounts, what it is.

E Where a Writ abates by the Death of one of the Plaintiffs or Defendants, or where an Outlawry is diſcharged, or for falſe Latin, Variance, or Want of Form, the Plaintiff ſhall have a new Writ by Journeys Accounts, which ſhall be a Continuance of the Cauſe, as if the firſt Writ had not been abated.

Where it lies, and where not.

F Where a Writ abates for the Default of the Demandant himſelf, as his miſtaking the Name of the Vill, &c. the Demandant ſhall never have a Writ by Journeys Accounts: But where it abates by Default of the Clerk, as for falſe *Latin*, Variance, or Want of Form, there he ſhall have it. 6 *Rep.* 10. *a.*

Three Executors Defendants, one dies; the Plaintiff may have a new Writ againſt the reſt.

G Debt againſt three Executors; one died pending the Writ, it ſhall abate: But the Plaintiff may upon this Surmiſe, with the Leave of the Court, have a new Writ by Journeys Accounts. 1 *Leon.* 44. Caſe 57.

Where a Writ of Partition was brought againſt two, and one of them was only Tenant at Will, whereby it abated; he ſhall have this Writ againſt the other.

H *A.* and *B.* Jointenants for Years, *B.* ſuffers *C.* to occupy with him; *A.* brings Partition againſt *B.* and *C.* ſuppoſing that *B.* had granted a Moiety of his Part, and ſhews, That he is Tenant at Will to *B.* and the Writ abated: *A.* may have another Writ againſt *B.* by Journeys Accounts. *Cro. Jac.* 218. *pl.* 8.

A **Where** an Outlawry is diſcharged or revers'd, there is no Default in the Plaintiff, and therefore he ſhall have a Writ by Journeys Accounts: *Cro. Jac.* 590. And in *Winch.* 82. it muſt be brought preſently; but in *Cro. Car.* 294. it may be brought within a Year after the Reverſal of the Outlawry. *See* 1 *Lut.* 297.

It lies where an Outlawry is diſcharged or revers'd.

When to be brought.

B **See** all the Pleadings upon the bringing of a Writ by Journeys Accounts, and how and when to be brought. 1 *Lutw.* from 287, to 297.

The Manner of bringing of it.

C **Where** a Writ abates for Non-tenure in the Whole, there ſhall be no Writ by Journeys Accounts: But where it is for Non-tenure in Part, there ſhall. *Ibid.*

Non-tenure for the Whole ſhall not have it:

In Part, ſhall.

D **It** muſt be brought in the ſame Court, and for the very ſame Quantity of Land, or other Things, as the firſt Writ was; and it is *quodammodo* a Continuance of the former Writ: 6 *Rep.* 10. *b.* For if there be two Executors, they ought to plead Fully adminiſtred, the Day of the firſt Writ.

It muſt be brought in the ſame Court for the ſame Land.

How to be pleaded.

E **When** the Writ is purchaſed, which muſt be *Recenter*, the Plaintiff muſt recite in an Entry upon the Roll that the former Writ was abated, and ſhew for what: *Super quo* he *per dietas computat' recenter tulit quoddam alind breve, &c. Ibid.* 10. *b.*

How the Plaintiff brings the ſecond Writ into the Pleadings.

F **A Judicial** Writ ſhall never be purchaſed by Journeys Accounts, becauſe they never abate for Form. 6 *Rep.* 10. *a. b.*

Judicial Writs cannot be had by Journeys Accounts.

G **Where** one not Party to the firſt Writ may have a Writ by Journeys Accounts. *Salk.* 393.

One not Party to the Writ.

Iſſues.

Iſſues in Pleading, and Iſſues forfeited, See { Jeofails. Jury. Proviſo. Trial. Venue.

Iſſues, what.

A **ISſues in Pleading are of two Sorts, viz. Iſſues in Law, and Iſſues in Fact. Iſſues in Law are where there is a Demurrer to a Declaration, Plea, Replication, &c. and there is a Joinder to theſe Demurrers; this is an Iſſue in Law to be determined by the Court: But an Iſſue in Fact is where the Plaintiff and Defendant have agreed upon a Point to be tried by a Jury; and theſe Iſſues in Fact are tried and determined by Juries.**

If Plaintiff denies the Defendant's Plea in his Replication, Defendant ought to take Iſſue on it.

B In the Caſe of *Wood* and *Fetherſton*, *Trin.* 1657. it was ſaid by the Court, that if the Defendant pleads, and the Plaintiff replies and denies the Plea, the Defendant ought to take Iſſue upon the Plaintiff's Replication.

All Iſſues muſt be join'd in a Court that has Power to try them.

C Every Iſſue is to be joined in ſuch a Court that hath Power to try it, otherwiſe the Iſſue is not well joined: 21 *Car. B. R.* For if the Cauſe cannot be tried, the Iſſue is fruitleſs; and if it be tried, the Trial is *coram non judice*, and ſo no good Judgment can be had upon it.

Treſpaſs againſt two for entering the Plaintiff's Land: One pleads it is his Freehold, the other that he enter'd by his Command. Only one Iſſue muſt be join'd.

D If an Action of Treſpaſs be brought againſt two for entering into the Plaintiff's Land, and one of them pleads, That the Land is his Freehold, and the other, That he entered into the Land by the Commandment of him that pleads it is his Freehold; here is to be but one Iſſue joined: 21 *Car. B. R.* For but one of the Defendants claims an Intereſt in the Land, and the other juſtifies but as a Servant unto him; and if the Trial paſs for him that claims the Intereſt, there is no Colour of Action to be maintained againſt the other; and if the Iſſue be then found againſt the Defendants they ſhall be found Guilty of a joint Treſpaſs, for which there needs but one Iſſue to be joined.

A **If** the Defendant pleads to Iſſue, and the Plaintiff neglects to enter it the ſame Term Iſſue is joined, the Defendant within the firſt five Days of the next Term may alter his Plea and plead *de novo*, any other Plea what he pleaſeth. *Per Magiſtrum Liveſay, & alios, &c. Paſch.* 21 *Car.* 2. *Reg.*

If Defendant pleads to Iſſue, and Plaintiff neglects to enter it, Defendant may plead *de novo*.

B **If** there be a Demurrer to an Evidence, the Fact is to be returned upon the Record, and appear to the Court, ſo that they may determine whether the Evidence appearing before them is ſufficient to maintain the Action; which if it doth, they thereupon give Judgment for the Plaintiff; if not, then for the Defendant.

On Demurrer to Evidence the Fact muſt be returned upon the Record, that the Court may determine concerning it.

C **When** a Juſtification is made by Force of a Cuſtom, the beſt Form of joining the Iſſue is to traverſe the Cuſtom particularly, and not the Cauſe generally by *de injuria ſua propria. Hob.* 76.

How to join Iſſue when Juſtification is made by Force of a Cuſtom.

D **By** the Rules of the Court, if the Plaintiff will not try his Iſſue after it is joined, in ſuch Time as he ought by the Courſe of the Court to do, the Defendant may give him a Rule to enter his Iſſue, which if he doth not enter, then the Defendant will nonſuit him: If the Plaintiff doth enter it, and give the Defendant's Attorney a Note of his Number-Roll, then the Defendant may give a Rule to try it by Proviſo: *Hill.* 22 *Car. B. R.* That he may free himſelf, if he can, of the Danger and Trouble he may be ſubject to by the depending of the Action brought againſt him, and to recover his Coſts for his unjuſt Vexation. This is given by the Statute.

If the Plaintiff will not try the Iſſue after it is join'd, the Defendant may give him a Rule to enter it; which if the Plaintiff doth not, he ſhall be nonſuit.

E **A Judgment** may be entered as to one Part of an Iſſue, and a *Nolle proſequi* to another Part of the ſame Iſſue: *Paſch.* 23 *Car. B. R.* This is only where the Iſſue may be divided. A *Nolle proſequi* is when the Plaintiff cauſes it to be entred upon the Roll that he will proſecute no farther, and is as much as to ſay in *Latin, Nolo ulterius proſequi.*

Judgment may be enter'd as to one Part of an Iſſue, and a *Nolle proſequi* to another Part of it.

F **Where** there is a Demurrer to one Part of the Declaration, and an Iſſue to the other Part, the Trial of it may be either before or after the arguing of the Demurrer, at the Election of the Plaintiff: *Paſch.* 23 *Car. B. R.* For the Demurrer and the Iſſue have no Dependency one upon the other; for one Part concerns Matter of Fact, and the other Matter in Law: But if the Iſſue be tried firſt, then the *Diſtringas Jur.* muſt be *tam ad triandum exitum inter partes junctum quam ad inquirendum de dampnis ſi judicium redditum fuerit pro quer.* And the Jury muſt, if they find the Iſſue for

Demurrer to one Part of a Declaration, and Iſſue to the other Part: It is at the Plaintiff's Election to try the Iſſue firſt, or argue the Demurrer.

the Plaintiff, give Damages upon the Iſſue, and Damages upon the Inquiry, ſeverally; but if they find the Iſſue for the Defendant, then they muſt aſſeſs Damages upon the Inquiry; and if the Court gives Judgment for the Plaintiff upon the Demurrer, he ſhall have his Coſts and Damages; but the Defendant ſhall have no Coſts upon the Iſſue found for him.

Iſſue taken upon a Dilatory, *&c.* and found againſt the Defendant, final Judgment ſhall be given: Otherwiſe upon a Demurrer.

If Iſſue be taken upon a Dilatory, *&c.* and found againſt the Defendant, final and peremptory Judgment ſhall be given; otherwiſe it is upon a Demurrer. *Raym.* 118. A

If Bar be good, Replication naught, and Iſſue upon it, there ſhall be a Repleader to the Replication, and the Bar remains.

If the Bar be good and the Replication naught, and Iſſue be taken upon it, they ſhall replead to the Replication, and the Bar remains; and ſo if the Bar be good, and the Replication good, and the Rejoinder naught, and Iſſue taken upon it, they ſhall replead to the Rejoinder, and the Bar and Replication remain: But if the Bar is naught, and the Replication good, and Iſſue taken upon it, they ſhall replead for the whole anew, becauſe the Bar was naught. *Raym.* 458. B

Judgment given, tho' ſeveral Variances between the Declaration and Replication.

Where Judgment was given, notwithſtanding ſeveral Variances between the Declaration and Replication. 1 *Saund.* 118, 119. C

Every Iſſue ought to be certain and ſingle.

Every Iſſue ought to be certain and ſingle, and joined upon the moſt material Thing in the Cauſe depending, that all the Matter in Queſtion between the Parties may be tried: *Hill.* 23 *Car. B. R.* For elſe the Trial will prove to little Purpoſe, becauſe the Matter in Queſtion will reſt undetermined. D

In an Action of Damages every Part muſt be put in Iſſue.

In an Action for Damages according to the Loſs which the Plaintiff hath ſuſtained, every Part ought to be put in Iſſue: 2 *Saund.* 206. 1 *Saund.* 269. Iſſue ſhall be taken upon the moſt material Point. 1 *Saund.* 22. E

When Iſſue is joined it cannot be waved, without the Conſent of both Parties.

If an Iſſue be once joined between the Parties, this Iſſue cannot afterwards be waved the ſame Term, if it be a good Iſſue, except both Parties do conſent unto it, although the Iſſue be but in Paper, and not engroſſed in Parchment: *Trin.* 24 *Car. B. R.* Therefore it is good to be well adviſed before the Iſſue be joined. F

The Place muſt not be made Part of the Iſſue in tranſitory Actions.

The Place ought not to be made Part of the Iſſue in a tranſitory Action; as an Action upon the Caſe for Words, *Indebitatus aſſumpſit*, *&c.* but all Ejectments, Treſpaſs *Quare clauſum fregit*, Actions upon Penal Statutes, *&c.* muſt be brought in the proper County: *Trin.* 24 *Car. B. R.* For the Place in tranſitory Actions is not material, as it is in a real and mixt Action, and the other before-mentioned Actions. G

A **Where** the Day or Place of a Demiſe ought not to be any Part of the Iſſue. 2 *Saund.* 317, 318.

Where the Day or Place of the Demiſe muſt not be Part of the Iſſue.

B **An** immaterial Iſſue joined, which will not bring the Matter in Queſtion to be tried, is not helped after Verdict, by the Statute of *Jeofails*, but there muſt be a Repleader: But an unformal Iſſue, as *Non infregit Conventionem*, is after a Verdict aided by the Statute; and ſo it was adjudg'd *Mich.* 18 *Car.* 2. *Reg. in B. R. inter* Walſingham & Combe, *Intratur Trin.* 17 *Car. Rot.* 1575. *Hill.* 1649. *Paſch.* 1650. 4 *Maii*, *B. S.* For this is Matter of Subſtance; for if there was no Iſſue there could be no Verdict; and ſo it is, as if nothing were done in the Cauſe; and therefore there muſt be a new Pleading to bring the Matter in Queſtion to an Iſſue.

An immaterial Iſſue not helped after Verdict.

C **What** Iſſue ſhall be taken upon a *Nul tiel Record* pleaded: 1 *Saund.* 99. How it ſhall be taken where one pleads, that no ſuch Writ iſſued, and the other ſays to the contrary. 2 *Lutw.* 1272.

How to take Iſſue on a *Nul tiel Record*.

D **In** an Action upon the Caſe for Service performed for a Time certain, the Defendant ought to put in Iſſue all the Time alledged in the Declaration. *Ibid.* 268, 269.

In Caſe for Service, the whole Time muſt be put in Iſſue.

E **The** Stat. of 32 *H.* 8. *cap.* 30. helps misjoining of Iſſues.

32 H. 8. cap. 30.

F **Every** Iſſue conſiſts of an Affirmative and Negative: 1 *Saund.* 338. Where Iſſue ought to be joined upon a Negative without any Rejoinder to it. 1 *Lutw.* 623.

Every Iſſue conſiſts of an Affirmative and a Negative.

G **An** Affirmative on the one Part, and a Negative on the other Part, altho' it be but an implied Negative, do make a good Iſſue: 15 *Maii*, *Paſch.* 1650. *B. S.* For an implied Negative doth deny what is affirmed, although not ſo plainly as an expreſs Negative doth; and ſo there is a Negative and an Affirmative to make an Iſſue.

An Affirmative on one Part, and an implied Negative on the other, make a good Iſſue.

H **Where** a good Iſſue is offered to the Defendant, he ought not to plead over: 1 *Saund.* 338. If he pleads over the Plaintiff ſhall have Judgment. *Id.* 318.

Defendant ought not to plead over if a good Iſſue be offer'd.

I **If** there be any Difference when an Iſſue is with an *Abſque hoc*, or not. 2 *Lutw.* 1139.

Difference when an Iſſue is with an *Abſque hoc*, or not.

K **When** a Plea is pleaded to the Plaintiff's Declaration, and the Plaintiff's Attorney's Hand is ſet to this Plea, then the Iſſue is joined betwixt the Plaintiff and Defendant, and not before: 6 *Feb.* 1650. *B. S.* For then both Parties are agreed of the Matter in Queſtion betwixt them. *Quære.*

When Iſſue is joined between Plaintiff and Defendant.

L **By** *Glyn* Chief Juſtice; *Hill.* 1655. It hath been held, That to plead *Non eſt factum* is a general Iſſue in an Action of Covenant.

Non eſt factum is a general Iſſue in an Action of Covenant.

If

Several Iſſues join'd, and Verdict but to one, the Whole is diſcontinu'd.

A If ſeveral Iſſues are joined, and the Jury give a Verdict but as to one of them, the Whole is diſcontinued.

Treſpaſs againſt one who has Title to Land, he muſt plead Not Guilty, and give his Title in Evidence.

B Where a Man hath Title to Land, and an Action of Treſpaſs is brought againſt him, he needs not to plead his Title, but Not Guilty, and give his Title in Evidence; but if he ſhould plead his Title, he muſt give Colour to the Plaintiff, or otherwiſe his Plea will amount to no more than a Not Guilty; and wherever a Man pleads ſpecially when it amounts but to a General Iſſue, it is naught upon a Special Demurrer.

If the Plaintiff doth not demur, but takes Iſſue on an ill Plea, and it be found for the Defendant, it is aided by the Statute of *Jeofails*.

C Where a Plea is naught, ſo that the Plaintiff might have demurred upon it and doth not, but takes Iſſue, and it is found for the Defendant; this is aided by the Statute of *Jeofails*, and the Defendant ſhall have his Judgment: *Cro. Eliz.* 455. 5 *Rep.* 43. So likewiſe it is where the Replication is naught, and Iſſue is taken upon it, and found for the Plaintiff. *Cro. Jac.* 312.

Verdict and Judgment revers'd, becauſe the Verdict found a Replication which the Plaintiff had not reply'd, tho' it was not help'd by the Statute of *Jeofails*,

D The Plea in Debt was, That there were no clear Profits. Repl'. That the Profits were 20 *l.* Rejoinder, That there was not any clear Profits; and Iſſue thereupon. Verdict, That there were clear Profits as the Plaintiff had replied, and the Verdict and Judgment reverſed, becauſe the Replication did not ſhew that there were any clear Profits; and the Verdict, That there were clear Profits as the Plaintiff had replied, and he had not ſo replied; and this not cured by any Statute of *Jeofails*. 2 *Lev.* 153. *vid. Raym.* 458.

When to enter the Cauſe in *London* and *Middleſex* upon a Rule given, and when if a Country Cauſe.

E If the Defendant gives the Plaintiff a Rule to enter his Iſſue, the Action lying in *London* or *Middleſex*, the Plaintiff muſt bring his Record into the Office within four Days after Notice of the Rule, and give the Plaintiff's Attorney a Note of the Number-Roll: And if the Action lies in the Country, he muſt bring it in before the Continuance-Day of the Term; and alſo give a Note of the Number-Roll to the Plaintiff's Attorney; and in Default thereof the Plaintiff ſhall be nonſuited. In Cauſes in *London* and *Middleſex* the Defendant cannot give the Plaintiff a Rule to enter his Iſſue, or to try the Cauſe *per* Proviſo the ſame Term that Iſſue is joined, but the next Term following he may.

Rule to try by Proviſo.

Two Iſſues, one good, and the other bad, and entire Damages, it is erroneous: But if ſeveral Damages it may be help'd.

F If there be two Iſſues joined in one Cauſe, and one of them is a good Iſſue and well joined, and the other is not a good Iſſue but ill joined; and upon Trial of the Cauſe entire Damages are given upon both the Iſſues; this is erroneous: But if ſeveral Damages be found, *viz.* ſo much upon the good Iſſue, and ſo much upon the bad, the Plaintiff may releaſe the bad Damages, and take Judgment for the reſt.

A **Where** there is an Iſſue upon Not Guilty, and there are other Iſſues upon Juſtifications, the Trial of the Iſſue of Not Guilty is but Matter of Form, and the Subſtance is upon the ſpecial Matter. *Cro. Jac.* 599.

Where there is an Iſſue upon Not Guilty, and ſeveral other Special Iſſues, how to be.

B **Upon** an Iſſue to part, and a Demurrer to part, the Iſſue may be tried before the Judgment be had in the Demurrer, with a Conditional finding and Conditional Damages. See the Awarding of the *Venire* in this Caſe in Title **Demurrer**.

The Iſſue may be tried before the Judgment in the Demurrer had. How the Damages to be found.

C **When** a general Plea, as *Non Aſſumpſit*, *Non Cul. &c.* is pleaded to the Plaintiff's Declaration, and the Defendant's Attorney's Hand is ſet to this Plea, and the Plaintiff's Attorney is paid by the Defendant's Attorney for the entering of the Plea, and for the Warrant of Attorney; then the Iſſue is joined betwixt the Plaintiff and Defendant in that Action, and not before: But in Caſe of ſpecial Pleading, after the Iſſue or Demurrer is drawn up in Paper, then the Paper-Book muſt be delivered to the Defendant's Attorney, who is to pay his Part for the Entry thereof, and for the Entry of the Warrant of Attorney; and when that is paid, then, and not before, the Iſſue upon the Pleadings or Demurrer are joined; for then both Parties are agreed upon the Determination of the Matter in Queſtion betwixt them.

When the Iſſue is joined upon pleading of a general Plea, and when not.

D **To** traverſe that a Writ of Error *adhuc pendet*, is naught; becauſe it is the putting of a Matter of Record to be tried by a Jury. 4 *Annæ B. R.*

To traverſe that a Writ of Error *adhuc pendet*, is naught.

E **If** the Subſtance of the Iſſue is ſufficient to entitle the Plaintiff to his Action, it is all one as if it had been with an *Abſque hoc*, *viz.* a Traverſe. *Lutw.* 1139.

If the Subſtance of the Iſſue be ſufficient, it is as good as a Traverſe.

F **Upon** a General Iſſue in Waſte, the Plaintiff muſt ſhew his Title. *Lutw.* 1547.

The Plaintiff muſt ſhew his Title upon a General Iſſue in Waſte.

G **Matter** amounting to the General Iſſue and Special Matter of Juſtification joined in one entire Plea, and good. 3 *Lev.* 41.

Matter amounting to the General Iſſue and Special Matter joined together, and good.

H *Non infregit Conventionem*, is naught, becauſe it is two Negatives, *viz.* The Declaration aſſigns a Breach in *Non Reparando*, which cannot be anſwer'd with a *Non Infregit:* 3 Lev. 19. But this will be good after a Verdict, it being only an Informal, not an Immaterial Iſſue.

Non infregit Conventionem, is naught.

I **In** Debt the Defendant may plead a Releaſe, or give it in Evidence on the General Iſſues of *Nil debit. Salk.* 394.

Releaſe.

K **So** in *Aſſumpſit* he may plead Payment, or give it in Evidence on *Non aſſump'. Ibid.*

Payment.

L **Yet** it was held that Performance in *Aſſumpſit* amounts to the General Iſſue. *Ibid.*

Performance.

General Iſſue.

In Treſpaſs a Plea, that it was the Horſe of *J. S.* and the Plaintiff took and impounded it, and that the Defendant took him by Replevin amounts to the General Iſſue. *Salk.* 394. A

The like.

Of Iſſues General, and where a Plea will not amount to the General Iſſue. See *Carth.* 188, 381. B

Iſſue immaterial.

An Iſſue immaterial, and yet there ſhall be no Repleader. *Ibid.* 371. C

Informal.

If Informal 'tis aided by a Verdict. 3 *Salk.* 107. D

An Iſſue cannot be joined upon two Negatives. *Ibid.* E

Affirmative and Negative.

Tho' the Matter is contradictory, yet there muſt be an Affirmative and a Negative. *Ibid.* 208. F

Iſſue immaterial.

Where the Iſſue is immaterial, and where not. *Ibid.* 121, 208. G

The like.

Where an Iſſue is joined upon an immaterial Thing, if 'tis found for the Plaintiff he ſhall have Judgment. *Ibid.* 305. H

Repleader.

But where 'tis taken upon an immaterial Traverſe there muſt be a Repleader. *Ibid.* I

Iſſue informal.

'Tis Informal if the Words *Super patriam* are omitted, *Ibid.* 209. K

Concluſion of Pleas.

Where there is an Affirmative and Negative, the Pleading muſt conclude to the Country, and not with *hoc paratus eſt verificare*. *Ibid.* 210. L

Waive of Plea.

Where the General Iſſue is pleaded and not entered, the Defendant may waive it within four Days of the Term and plead ſpecially; ſo if he plead in Abatement he may waive it, and plead the Special Matter. *Ibid.* 211, 274. M

Legality of a Warrant.

Where the Legality of a Warrant muſt not be put in Iſſue. *Ibid.* 354. N

Traverſe.

Where a Traverſe amounts to the General Iſſue 'tis ill. *Ibid.* 356. O

Part found for the Plaintiff.

Where the Iſſue is Special, if Part be found for the Plaintiff it is well enough, for if the Defendant's Plea be falſe in Part, it is falſe in the Whole; but upon the General Iſſue all ought to be true, and found for the Defendant. *Skin.* 299. P

Iſſue immaterial.

Where the Iſſue is immaterial, and where the Defendant ſhall not take Advantage of an ill Replication. *Modern Caſes in Law and Equity*, 173 174. Q

Iſſue Informal.

An Informal Iſſue may be amended, but not where there is none or a void Iſſue. *Ibid.* 376, 377. R

Iſſues good or ill.

What are good or ill Iſſues; and of the Iſſue on *Solvit ad diem*. *Ibid.* 346. S

A **Where** the Iſſue will not end the Matter the Plaintiff may take Advantage of it by a Demurrer. *Mod. Ca.* 346.

Demurrer.

B **Where** ſeveral Iſſues are joined, a Verdict that finds the one and not the other, is not good. *Ibid.*

Verdict.

Iſſues on Sheriffs, &c.

C **Iſſues on Sheriffs are the Sums of Money wherein he is amerced to the King for the not doing of his Duty in his Office: And they are called Iſſues, by Reaſon they are to be levied out of the Iſſues and Profits of the Sheriff's Lands, in caſe where he hath levied Money upon an Execution, and keeps it in his Hands, and refuſed to return his Writ, or any other Writ which he hath executed.**

Iſſues on Sheriffs, what.

D **The** Court doth uſe, upon a Motion by an Attorney at the Side-Bar, to order double or treble Iſſues, if they ſee Cauſe, to be ſet upon a Sheriff or other Officer, for not bringing in of the Body of the Party into Court upon a *Cepi Corpus* returned, or not returning a Writ.

How to proceed to ſet Iſſues upon a Sheriff for not returning of a Writ, or not bringing in of the Body.

E **When** a Sheriff is amerced in a great Sum to the King, and the Amercement is eſtreated into the Exchequer; the King, upon Application made, will grant the Iſſues to the Plaintiff, towards the Satisfaction of his Debt.

How the Amercements to be.

F **When** Iſſues are ſet upon a Sheriff or other Officer, by the Court, for the neglect of his Duty; and afterwards, upon ſome Reaſons ſhewn to the Court why they ſhould be taken off or diſcharged, if the Court thinks fit to diſcharge them: This Court may, before they are eſtreated into the Exchequer, which is always the laſt Day of every Term, make a Rule to diſcharge them; and they ought to be ſtruck out of the Eſtreat-Roll, otherwiſe Proceſs will iſſue out to levy theſe Iſſues, notwithſtanding they are diſcharged by the Order of Court: For as the Iſſues do appear upon the Record, ſo they cannot be diſcharged but upon Record.

The Court may diſcharge the Iſſues before they are eſtreated into the Exchequer.

Judges.

See { Certificate.
Courts.
Informations.

Judges of the King's Bench, how made and removed.

A Judge of the King's Bench cannot be made by Writ, but by Commiſſion under the Great Seal, but he may be diſcharged by Writ ſub magno ſigillo. 5 Edw. 4. 137. A

Judge acting contrary to his Oath.

Thorpe, Judge of the King's Bench, was at the Will of the King, for his Body, Lands and Goods, becauſe he had done a Thing contrary to his Oath. 40 *Edw.* 3. B

Altering a Record.

Judge *Ingham* was *in miſericordia Regis*, for cauſing a Record to be razed, and making an Amercement of a poor Man, ſet at 6 *s.* 8 *d.* to be but 2 *s.* 4 *d.* 2 *Rep.* 39. C

Judges to have a Paper of the Cauſes to be ſpoken to in Court.

The Judges are to have a Paper of the Cauſes which are to be ſpoken to in Court, with the Attornies Names againſt each Cauſe, ſent unto them particularly at Five of the Clock in the Evening, the Day before they are to be ſpoken to in Court. *Hill.* 22 *Car. B. R.* That they may have Time to conſider of the Buſineſs of that Day, and prepare to ſpeak to it. D

Juſtices of *Oyer* and *Terminer* cannot try Indictments not taken before themſelves, but Juſtices of Gaol-Delivery may.

Juſtices of *Oyer* and *Terminer* cannot proceed to try Perſons indicted upon Indictments not preferred before themſelves; but the Juſtices of Gaol-Delivery may: *Trin.* 23 *Car. B. R.* For the Juſtices of Gaol-Delivery have a more general Commiſſion for proceeding againſt, and trying of Malefactors, than the Commiſſioners of *Oyer* and *Terminer* have. E

A The Judges of the Common Law have no ordinary Juriſdiction to examine Witneſſes in their Chambers; but by the Conſent of the Parties, and Rule of the Court, they may upon Interrogatories exhibited in Writing, take their Depoſitions thereunto in Writing; and if Occaſion be, there may be croſs Examinations upon Interrogatories exhibited, and there may be croſs Examinations of the Party: But ſome Things which a Judge of this Court doth act in his Chamber, as a Judge of this Court, are accounted as done in Court. *Trin.* 24 *Car.* 1. *B. R.* For it is in Order to the Proceedings in Court.

Their Authority to examine Witneſſes in their Chambers.

B Where there do ſpecial and doubtful Matters ariſe upon the reading of a Record, ſo that the Court is not (for the preſent) ſatisfied of the Law, the Court will order the ſame to be put into the Paper, and then the Attornies on both Sides ought to prepare Books, *viz.* Copies of the Record for the Judges, at the Clients equal Charge, that the Judges may upon View of the Record, the better conſider of the Matters in diſpute; For it is the Courſe for the Attornies to make their Clients to pay for ſuch Books in all ſuch Caſes. By *Rolle*, C. J.

Copies of Records to be prepared for the Judges.

C The Judges of this Court declared, that they would not ſit longer in Court than 'till One a-clock in the Afternoon upon the laſt Day of the Term, and ſo they ſaid the Common Pleas had done. *Trin.* 1651. *B. S.* This was, that the Attornies might not defer their Clients Buſineſs to the laſt of the Term, as too uſually ſome do, to the great Toil of the Court and their Clients.

Declaration of the Judges of *B. R.* concerning the Time of their Sitting the laſt Day of the Term.

D Juſtices of the King's Bench are the ſovereign Juſtices of Gaol Delivery, and *Oyer* and *Terminer*. 9 *Rep.* 118. *b.*

Juſtices of the King's Bench are the ſole Juſtices of *Oyer* and *Terminer*.

E No Commiſſioners of *Oyer* and *Terminer*, or Gaol-Delivery, can by Law be the ſame Time in the ſame County where the King's Bench is ſitting. *Ibid.*

No Commiſſioners of *Oyer* and *Terminer* where the King's Bench is ſitting.

F It cannot be aſſigned for Error, that the Judge of the Marſhal's Court was not Judge, or not preſent in Court when the Cauſe was tried. 1 *Lev.* 311.

It cannot be aſſign'd for Error, That the Judge, who gave the Judgment, was no Judge.

G It was aſſigned for Error, That the Judge who tried the Cauſe, had not taken the Sacrament, Oaths, and Teſt; and held to be no Error. 2 *Lev.* 84.

Or had not taken the Oaths.

H Where the Judge before whom the Cauſe is tried muſt make a Certificate to prevent Coſts, where ſeveral Pleas are pleaded, by the Statute 4 & 5 *Annæ*, ſee Title Coſts.

Where the Judge muſt make a Certificate to prevent Coſts, by the 4 & 5 Annæ, cap.

I Neither the Lord of Ancient Demeſne, nor of a Court-Baron, nor the Sheriff in a County-Court, are Judges, when the Plea is held by Writ of Right, *Juſticies*, or Admeaſurement of Dower, Hundred-Court, &c. But the Suitors are by the Common

Who are Judges in Ancient Demeſne, Court-Barons, County-Courts, &c. when the Plea is by Writ.

Law Judges of the Court. But in a Rediſſeiſin, and in the Torn, the Sheriff is Judge. *6 Rep.* 11, 12.

Where no Writ of Error.

Where a Reference is to the Judges on a Caſe ſtated, no Writ of Error lies on their Judgment: But if they certify their Reaſons, the Court may conſider of it. *Mod. Ca. adjudg'd in the Court of Chancery*, 5. A

Judge not to ſit where he is a Party.

The Mayor of *H.* committed for ſitting in Judgment where he was Party, tho' by the Charter the only Judge there. *Salk.* 396. B

Traverſe.

Where one acts as Judge his Act is not traverſable, *aliter* of an Officer as a Conſtable, *&c. Ibid.* C

Error in Judgment.

A Judge not anſwerable for Error in Judgment, either by Action or Indictment. *Ibid.* 397. D

By-Laws.

Mayor and Commonalty of *L.* may limit Penalties of By-Laws to themſelves. *Ibid.* E

Where to be ſued.

But ſuch Penalties cannot be ſued for in the Mayor's Court, *aliter* if the Mayor could be ſevered. *Ibid.* 398. F

Abatement.

Mayor is Head of the Corporation, and an Action by them abates by his Death. *Ibid.* G

Judges not to be ſued, where.

And Judges not to be ſued for any Matter done by them, unleſs *malo animo*. *Carth.* 492. H

Judgment.

See
- Adminiſtrator.
- Aſſignment.
- Conditions.
- Damages.
- Error.
- Execution.
- Fieri Facias.
- Iſſue.
- Jury.
- Mortgage.
- Nolle Proſequi.
- Nonſuit.
- Plea.
- Reverſal.

Judgment, what.

A Judicium quaſi Juris dictum, **the very Voice of the Law and Right; and therefore** Judicium ſemper pro Veritate accipitur. **The antient Words of Judgments are very ſignificant,** viz. (Conſideratum eſt, &c.) **becauſe Judgment is ever given by the Court upon due Conſideration had of the Record and Matter before them.** Co. Lit. 39. a.

When a Judgment upon a *Nihil dicit* ought to be enter'd.

B **A Judgment** upon a *Nihil dicit* could not be enter'd by the Rules of the Court, until two Rules, each of them four Days, had been given in the Office for the Defendant to plead; the Reaſon of giving the two ſeveral four Days Rules is ſaid to be, That the Defendant might without a Special Imparlance plead any Thing in Abatement at any Time within the firſt four Days; and if the Defendant had not pleaded within the firſt four Days, then the ſecond Rules were to plead within four Days more peremptorily, at which Time he could plead nothing but in Bar; but the Practice is much altered. *Vide* Title **Declarations.**

If the Defendant's Attorney enter a Plea in the Office, the Plaintiff's Attorney cannot enter a Judgment upon a *Nihil dicit.*

C **If** the Defendant's Attorney do enter a Plea for his Client in the Office, the Plaintiff's Attorney cannot enter a Judgment againſt the Defendant upon a *Nil dicit* for Want of a Plea, altho' the Plea be not given unto him by the Defendant's Attorney: *Mich.* 22 *Car. B. R.* and *Paſch.* 24. *B. R.* For the Office is the Place where the Attorneys on both Sides are to inform themſelves of the Proceedings in their Clients Cauſes; and the Delivery of Declarations and Pleas, *&c.* by one Attorney to another in their

their Clients Cauſes is rather Matter of Courteſy and Civility, than of any Neceſſity or Duty; yet it is the uſual Practice to do it, and very rarely omitted. *Quære*, If Judgment may not be ſigned notwithſtanding, if the Defendant's Attorney has refuſed to pay for the Declaration, *&c.*

Plaintiff's Attorney may enter Judgment four Days after he brings the *Poſtea* into Court.

Four Days after the Plaintiff's Attorney doth bring the *Poſtea* into the Court, if the Rule for Judgment is out, he may enter Judgment for his Client by the Courſe of the Court. *Mich.* 22 *Car. B. R.* Except the Defendant do then, or before, move ſomething to the Court in Arreſt and Stay of Judgment; but no Judgment upon a Verdict ought to be entered until a Rule given, and ſuch Rule out. A

There ought to be no Motion in Arreſt of Judgment, except the Roll or *Poſtea* be in Court.

No Counſel ought by the Rules of the Court to move any Thing in Arreſt of Judgment, except the Roll wherein the Judgment is entered, or the *Poſtea*, be in Court: 22 *Car. B. R.* That the Court may be ſatisfied that the Matter moved in Arreſt of Judgment is truly recited from the Record; for the Court will not rely upon the Allegation of Counſel at the Bar. B

Defendant has all the Term in which a Verdict was given againſt him to move in Arreſt of it, unleſs the Plaintiff have ſign'd it, for then he is put to his Writ of Error.

The Defendant hath all the Term wherein a Verdict was given againſt him, to ſpeak any Thing to arreſt it, if the Plaintiff hath not given his four Days Rule, and ſigned his Judgment; which if he hath, then it is too late to move, and the Defendant is put to his Writ of Error; for the Judgment is all the Term wherein it was given, in the Breaſt of the Judges, altho' it be entered upon Record, the Term being but one Day in Law. *Paſch.* 23 *Car.* and 24 *Car. B. R.* C

The Defendant may compel the Plaintiff to enter his Judgment.

If a Verdict paſs for the Plaintiff, and the Plaintiff will not enter his Judgment upon this Verdict, the Defendant may by Motion of Court compel the Plaintiff to enter it; and ſo it is of a Writ of Inquiry of Damages. *Trin.* 22 *Car. B. R.* For the Plaintiff ought to be content with what the Law gives him; and if the Defendant might not compel the Plaintiff to enter it, he ſhould be hindered from pleading it in Bar to another Action brought againſt him for the ſame Cauſe as the Law allows him to do. D

Poſtea retornable the laſt Day of the Term, Judgment ſhall be the ſame Term, unleſs Motion in Arreſt be made the ſame Day it was returnable.

If a *Poſtea* is returnable in Court the laſt Day of the Term, altho' the Defendant cannot have four Days Liberty to ſpeak in Arreſt of Judgment; yet by the Courſe of the Court Judgment may be given in the Cauſe the ſame Term, unleſs the Defendant do move the Court the ſame Day it was returnable in Arreſt of Judgment. *Paſch.* 24 *Car. B. R.* E

A **One** may ſpeak in Arreſt of Judgment given upon a *Nihil dicit* at any Time during the ſame Term that the Judgment was obtained, before Execution taken out, if in Debt; or the filing of the Writ of Inquiry, if in Caſe: *Mich.* 22 *Car.* *Paſch.* 24 *Car.* *B. R.* For the Defendant is more favoured in a Judgment given againſt him upon a *Nihil dicit*, than where a Judgment is given againſt him upon a Verdict; becauſe in the former Caſe he makes no Defence, but in the latter Caſe it is intended he hath made his full Defence.

When one may move in Arreſt of Judgment given on a *Nihil dicit.*

B **If** a Verdict be given after the Term, altho' by Adjournment, no Judgment can be given upon that Verdict, until the next Term following: For ſuch Proceedings cannot be in the Vacation-time; for the Judgment is the Act of the Court, and the Court ſits not but in Term; and until there is a Return of the *Poſtea* at the Day in Bank, no warrantable Judgment can be given.

No Judgment can be given upon a Verdict after Term, until the next following Term.

C **In** every Caſe the Plaintiff and Defendant ought to be *in Miſericordia*, or elſe a *Capiatur* againſt them, unleſs the Defendant comes *primo die placiti*, and confeſſes the Action; for it is for the King's Benefit, and may be aſſigned for Error by either Party. *Cro. Jac.* 211. *pl.* 3. 1 *Cro.* 505.

In every Judgment a *Miſericordia* or *Capiatur*, unleſs they come *primo die placiti.*

D **A** *Miſericordia* enter'd in a Judgment for a *Capiatur* was aſſignable for Error, altho' it was for the Benefit of the Party. 2 *Saund.* 47. *Vide eund.* 191, 192, 193. But the Law is now alter'd.

A *Miſericordia* enter'd for a *Capiatur* is aſſignable for Error.

E **A Judgment** with a *Capiatur* is only for a Malefeazance. A Judgment *in Miſericordia* is in a Nonfeazance. *Cro. Jac.* 348. *pl.* 1. 224, 631.

Where it ſhall be *Capiatur.*

Where it ſhall be *in Miſericordia.*

F **Upon** a Recovery in an Action where the Plaintiff doth declare for a Thing done *Vi & armis*, the Judgment ought to be enter'd with a *Capiatur* for a Fine thereupon due to the King; upon which Record, Proceſs of Outlawry iſſues out of the Crown-Office againſt the Defendant; but *Capiaturs* are now taken away by Act of Parliament, (*which ſee at the End of this Paragraph:*) But in Actions upon the Caſe where the Plaintiff is not to declare with a *Vi & armis*, there the Judgment againſt the Defendant ought to be, that he be *in Miſericordia*. The *Capiatur*, which is Impriſonment of the Party until the Fine for the King is paid, is for the Breach of the publick Peace, which every Action *Vi & armis* doth imply: But Treſpaſſes on the Caſe do not ſo, and therefore the Party in thoſe Actions is only to be amerced, and not to be impriſoned or fined: And this is the Reaſon of the different Entry of the Judgments.

Formerly, upon a Judgment in Treſpaſs, it was *Capiatur*; and in Caſe, *Miſericordia.*

The Reaſon of the *Capiatur* in the Judgment.

G **Note**, This *Capiatur* in Treſpaſs, Ejectment, Aſſault, and Falſe Impriſonment, is now taken away by the Statute of 4 & 5 *W. & M. cap.* 12.

In what Actions the *Capiatur* is taken away by the 4 & 5 W. & M. c. 12.

and there is in lieu thereof 6 *s.* 8 *d.* paid to the Secondary for the Fine before he ſigns the Judgment; and now the Entry of the Judgment is only as far as the *Capiatur*, leaving out, *Et prædictus defendens capiatur, &c.* *Mich.* 8 *W.* *B. R.* But *note*, A *Capiatur* muſt be entered upon *Non eſt factum* pleaded, that being omitted out of the ſaid Statute.

Where the Judgment againſt a Lord muſt be entered with a *Capiatur*.

Where a Peer pleads *Non eſt factum*, and it is found againſt him, the Judgment muſt be, *quod capiatur* for the Fine due to the King. *Cro. Eliz.* 503. *pl.* 26. A

And where with a *Miſericordia*.

But where he pleads *Non eſt factum*, and afterwards *Relicta verificatione cognovit actionem*, there it muſt be *in Miſericordia*. *Cro. Jac.* 64. *pl.* 2. B

How to be upon a Penal Statute.

Caſus omiſſus out of the Act.

In an Action *Qui tam* upon a Penal Statute, if it be for a Sum certain, the Judgment muſt be entered with a *Miſericordia*; but where it is *De placito tranſgreſſionis & contemptus contra formam Statuti, &c.* there it ought to be *Capiatur*; becauſe that is *Caſus omiſſus* out of the Act, the Act extending only to Treſpaſs and Ejectment, Aſſault and Impriſonment. C

If there be ſeveral Judgments againſt the Defendant, one may be reverſed, and the other continue in Force.

Where there are ſeveral diſtinct Judgments againſt the Defendant, one of thoſe Judgments may be reverſed as erroneous, and yet the other Judgments ſtand in Force. 21 *Car.* 2. *B. R.* Where the Damages are ſeveral, tho' the Coſts are entire. *Hob.* 5. But not where the Judgment is entire. D

Where in Battery againſt ſeveral, and ſeveral Actions, ſeveral Iſſues and Verdicts; and Judgment upon *Non informatus* againſt one, and a Writ of Inquiry awarded.

How the Judgment ſhall be.

The Reaſons of the Judgment given by the Ch. J. *Cook.*

Where in Battery againſt ſeveral, there are ſeveral Declarations and Iſſues, and a Verdict for ſeveral Damages, *viz.* 200 *l.* againſt *Crocket*, and 200 *l.* againſt *Cocket*, and Judgment againſt them for Coſts to 30 *l.* Afterwards Judgment was given upon the ſame Declaration againſt *Cob*, upon a *Non informatus*, and a Writ of Inquiry of Damages awarded, and a *Vic' non miſit bre'*: The Judgment was entered, that it appeared to the Court that upon this Battery Damages were found againſt *Crocket* for 200 *l.* that the Plaintiff ſhould recover againſt *Cob*, who was the *Non informatus* Man 200 *l.* and 30 *l.* for Coſts: And upon a Writ of Error this Judgment was affirmed, becauſe the Writ is entire; and the Defendants are all charged with one Battery, altho' the Declarations were ſeveral; and the Declarations being with a *Simul cum*, ſhews that they are joint Treſpaſſors, and therefore the Damages given againſt the one ſhall ſerve, and may be taken againſt the other. *Cro. Jac.* 348. *pl.* 2. 349. E

A **Treſpaſs** is brought againſt three; one lets it go by Default, the other two plead Not guilty: Upon a Verdict, Damages are found ſeverally againſt the two who pleaded, *viz.* 1000 *l.* againſt one, and 50 *l.* againſt the other: The Plaintiff enters a *Nolle Proſequi*, as to the Party againſt whom the Judgment by Default was, and againſt one of the Defendants againſt whom the 50 *l.* Damages was found; and Judgment was had againſt one only, *viz.* againſt him whom the Recovery of 1000 *l.* was againſt. And held good. 3 *Mod.* 101, to 103. See alſo the Parliament Reports, *fol.* where it was affirmed. *Vide* Title **Verdict**, and Title **Damages**: And *Pilford*'s Caſe, 10 *Rep.* 117. *a.* and *Heydon*'s Caſe, 11 *Rep.* 5, 6.

Treſpaſs againſt three, one lets Judgment go by Default.

Two pleaded Not guilty, and ſeveral Damages againſt them.

A *Nolle Proſequi* as to him who let it go by Default.

B **Altho'** the Defendants ſever themſelves by Plea, yet when they are both found guilty of one and the ſame Battery, one Damages and Judgment ought to have been given, and not ſeveral: And if ſeveral Damages are found, there ought to be but one Judgment for the Damages; and he ought to make his Election againſt which he will take his Judgment. *Cro. Eliz.* 118. *pl.* 7.

How it is where Damages are found ſeverally in an Action brought againſt two.

C **Treſpaſs** and Aſſault againſt three who plead ſeveral Pleas, and are found Guilty, and entire Damages given; and aſſigned for Error that the Damages ought to have been found ſeverally; but the Judgment was affirmed. *Cro. Jac.* 384. *pl.* 15. 118.

Treſpaſs againſt three, and upon three ſeveral Iſſues entire Damages given; and good.

D **Trover** againſt two Defendants who were found Guilty ſeverally for Part, and ſeverally Not guilty for the Reſidue, and entire Coſts; and one *Ideo in miſericordia* againſt the two Defendants, and one *Ideo in miſericordia* againſt the Plaintiff *pro falſo clamore*: And inſiſted upon for Error, that it being a joint Converſion, they ought to have been both found guilty jointly, and not to have been ſevered in the Verdict and aſſeſſing of Damages; or if they might be ſevered, the Plaintiff ought to have but the Damages given againſt one of them; as it is in *Heydon*'s Caſe. 11 *Rep.* 5. *b.* *Curia.* The Plaintiff ſhall have ſeveral Damages; for being found ſeverally guilty of ſeveral Parcels converted, he ſhall have Judgment accordingly: And it is not like *Heydon*'s Caſe, where there was but one joint and ſole Battery; there, tho' ſeverally found, yet the Plaintiff ought to take his Judgment but for one of the Damages; but when the Treſpaſs is ſeveral, and ſo found, as here, the Plaintiff ſhall recover according to the Verdict; ſo this being ſeverally found, and the Converſion by them ſeverally of ſeveral Things, the Damages are well aſſeſs'd ſeverally, and the Plaintiff ſhall have Judgment againſt them ſeverally for Damages, according to the Verdict;

Trover againſt two, who plead ſeverally, and are ſeverally found Guilty and ſeveral Damages.

How the Judgment ſhall be.

And the Difference between a joint Battery and a Treſpaſs for Goods.

alſo

alſo the Judgments *in miſericordia* were well entered. *Cro. Car.* 54. *pl.* 8. 55.

Damages found ſeverally upon two Iſſues, where it ſhould have been but upon one.

Aſſault, Battery, and Wounding; *quoad* the Battery and Wounding Not guilty, and *quoad* the Aſſault, Juſtification: Both Iſſues found againſt the Defendant, and for the Battery and Wounding Sixpence, and for the Aſſault a Penny; whereas there ſhould not have been Damages for the Aſſault, it being included in the firſt Iſſue: And Judgment was revers'd, *Cro. Jac.* 251. *pl.* 5. See Title **Nolle Proſequi.** A

Trover againſt three, one pleads Not Guilty, the others Specially, to which is a Demurrer.

The Iſſue is tried, and the Plaintiff hath a Verdict.

A *Nolle Proſequi* is entered againſt the other two. How it is.

When the *Nolle Proſequi* diſcharges the whole Action, and when not.

In an Action of Trover againſt three, one pleads Not guilty, the other two ſpecially; the Plaintiff demurs to their Special Plea and tries his Iſſue, and hath a Verdict and Judgment thereupon; afterwards, before Judgment againſt the other two, the Plaintiff enters a *Nolle Proſequi*: And held, That if the *Nolle Proſequi* had been before the Judgment, it had diſcharged the whole Action; for it had been in the Nature of a Releaſe in Law to the other; ſo alſo it had, if the Judgment had been againſt them all, and the Plaintiff had entered the *Nolle Proſequi* for the two; for a Nonſuit or Releaſe, or other Diſcharge of one, diſcharges the reſt. *Hob.* 70. See Title **Nolle Proſequi.** B

How the Judgment muſt be in Trover againſt the Baron and Feme, for the Converſion of the Feme after Marriage.

Baron and Feme muſt be *in miſericordia*.

Where *capiantur*.

Trover againſt Baron and Feme, for the Trover and Converſion of the Feme, during the Coverture; Part found for the Plaintiff, and Part for the Defendant: And Judgment that the Feme *ſit in miſericordia*, and that the Plaintiff *pro falſo clamore ſuo quoad reſiduum unde Defend' acquietati exiſtunt, ſit in miſericordia*: And aſſigned for Error that the Feme was *in miſericordia*, whereas it ought to be the Baron and Feme *ſint in miſericordia*; and ſo it is in Treſpaſs *quod* the Baron and Feme *capiantur*. C

How the Judgment ſhall be where in an Ejectment againſt Baron and Feme, the Baron dies after the *Niſi prius*, and before the Day in Bank.

Ejectment againſt Baron and Feme, both are found guilty; the Baron dies ſince the *Niſi prius*, and before the Day in Bank, becauſe it is in the Nature of an Action of Treſpaſs, and the Feme is charged for her own Act: Adjudged that the Action did continue againſt her, and Judgment was enter'd againſt her ſole, becauſe her Huſband was dead. *Cro. Jac.* 356. *pl.* 12. D

How to be in Treſpaſs, Part for the Plaintiff, and Reſidue for the Defendant.

Treſpaſs for taking away of Goods; the Verdict found Part for the Plaintiff and Part for the Defendant; and the Judgment was entered that he recover his Damages for the Part & *quod* Defendant *capiatur*; and the Plaintiff *in miſericordia pro falſo clamore pro reſiduo*: And aſſigned for Error that it ſhould be *Nil capiat per* E

billam

billam pro reſiduo. Sed non allocatur; and it was affirmed. *Moor. Caſe* 956.

A **Treſpaſs** againſt two, one pleads Specially, the other Not guilty, and a Demurrer is joined upon the Special Plea, and Judgment for the Plaintiff, and a Writ of Inquiry of Damages; the Plaintiff may take his Judgment for theſe Damages, and relinquiſh his Action as to the Iſſue; but let him take care to enter his Judgment before he relinquiſhes his Action. See *Roll. Abr.* 104.

Treſpaſs againſt two, one pleads ſpecially, to which is a Demurrer, and Judgment for the Plaintiff.]

What the Plaintiff may do ſafely in this Caſe.

B **Debt** againſt three as Executors; one appears upon the Summons, and confeſſes the Action; and Judgment *quod recuperet debitum* againſt the three, and have Execution againſt them *de bonis teſtatoris* in their Hands, *Si tantum, &c.* and the Damages *De bonis propriis* of him who appeared, and *Miſericordia* againſt them all; then there iſſued out a *Sci. fi.* Inquiry, and a *Devaſtavit* found, and a *Sci. fa.* iſſued out, and two *Nichills* returned. Execution was ſued againſt them all, and aſſigned for Error.

Debt againſt three Executors, one appears upon the Summons, and confeſſes the Action and Judgment againſt all three and Execution *De bonis teſtator' ſi, &c. Et ſi non* the Damages *de bonis propriis* of him who appeared; and a *Sci. fi.* Inquiry againſt them all, and a *Devaſtavit* found, and Judgment upon the *Sci. fa.*

C **That** the Appearance was upon the Summons, and not upon the grand Diſtreſs, and ſo out of 9 *E.* 3. *cap.* 3.

And upon a Writ of Error reverſed, becauſe not within the Statute. 9 **E.** 3. **cap.** 3.

D **See** Judgment by *Nil dicit* againſt one Defendant, as to Part of the Treſpaſs. 2 *Lut.* 1358.

Judgment againſt one Defendant by *Nil dicit*, as to Part of the Treſpaſs.

E **Before** the Statute of 13 *Eliz. cap.* 45. if the Year and Day had been paſt, no Execution could have been ſued out upon any Judgment, but the Remedy to recover the Money due thereupon was by Action of Debt; but that Statute hath now given a *Scire facias*.

Sci. fa. may be ſued out after the Year and Day, by Stat. 13 **Eliz.** **cap.** 45.

F **If** a Judgment be given which is erroneous, and the Plaintiff do take out a *Scire facias* upon that Judgment, and have Judgment upon that *Scire facias*; the Judgment upon that *Scire facias* is erroneous alſo. *Mich.* 22 *Car. B. R.* For if the Foundation be naught, that which is built upon it muſt needs fall; and here the firſt Judgment is the Ground of the ſecond; which being erroneous, the ſecond cannot be good; but the Defendant muſt bring his Writ of Error *tam in redditione Judicii quam in adjudicatione executionis ſuper judicium illud.*

If a *Sci. fa.* be taken out on an erroneous Judgment, and the Plaintiff have Judgment upon it, it is erroneous alſo.

G **Judgment** given by Default upon a *Scire facias*, retorned againſt one not ſubject to the firſt Judgment, ſhall bind him. *Raym.* 19.

Judgment by Default on a *Sci. fa.* ſhall bind a Man, tho' he was not ſubject to the firſt Judgment.

Judgment with Stay of Execution till a certain Day; yet Plaintiff may ſue out a *Capias*, or a *Fi. Fa.* before that Day.

A If the Defendant gives a Judgment with Stay of Execution till a certain Day, the Plaintiff may, notwithſtanding ſuch Stay of Execution, ſue forth a *Capias*, or *Fi. Fa.* into the County where the Action is laid, returnable before that Day, to enable him at that Day to take a *Teſtatum* againſt the Defendant; but he ſhall not in that Caſe ſue out a *Capias* to warrant a *Scire facias* againſt the Bail, unleſs by ſpecial Agreement, becauſe it is to the Prejudice of a third Perſon; and the *Capias ad Satisfaciendum*, in that Caſe, ought to be delivered to the Sheriff four Days before the Return be paſt, and after the Return thereof, to be filed. *Per Magiſtrum Liveſay, & alios, &c. Paſch.* 21 *Car.* 2. *Regis.*

If a Man doth not at the Return of the *Sci. fa.* plead a Releaſe, or any other Matter which he hath, he will be barred.

B Where there is a Judgment againſt the Anceſtor, and a *Sci. fa.* iſſues out againſt the Heir and Tertenants, and the Heir and Tertenants are returned ſummoned; and the Heir hath a Releaſe by him which he doth not plead, but Judgment is had againſt him by Default; this Judgment will ſtand good againſt him: And an *Audita Querela* will not lie, becauſe he might well have pleaded his Releaſe; and he having once ſlipt that Opportunity, ſhall be for ever foreclosed; but if he had not been returned ſummoned, an *Audita Querela* would then well lie.

When the Plaintiff cannot have Execution upon a Judgment till after the Year and a Day.

C If a Judgment be obtained, but the Plaintiff doth not take out Execution upon this Judgment in a Year and a Day next after the Judgment given, the Plaintiff cannot then take out Execution until he hath revived this Judgment by a *Sci. fa.* which *Sci. fa.* is to give Notice to the Defendant, to ſhew Cauſe why the Plaintiff ſhould not take out Execution upon the Judgment: Which Writ he may have without Motion by the Courſe of the Court, if the Judgment be under ten Years ſtanding; but if the Judgment be above ten Years ſtanding, and no Execution hath been taken out, ſuch a Judgment cannot be revived by a *Sci. fa.* without a Motion and Leave of the Court: But the Court doth not uſe to deny a *Sci. fa.* in ſuch a Caſe.

But muſt have his *Sci. fa.*

But then muſt have a *Sci. fa.*

How to continue an Execution upon the Roll to ſave a *Sci. fa.*

D But if the Plaintiff ſues out either a *Fieri facias*, *Capias ad ſatisfaciendum*, or *Elegit*, and gets them returned, and enters them upon the Roll, and then files them, he may at any Time continue them on upon the Roll, and have either a *Fieri facias*, *Capias ad ſatisfaciendum*, or *Elegit*, without a *Sci. fa.*

How the Proceedings are upon a Writ of Error in Parliament.

E Where a Writ of Error is brought returnable in Parliament upon a Judgment given in this Court, and the Judgment is affirmed or reverſed in Parliament: There comes then an Order from the Houſe of Lords, directed to this Court, ſignifying either the

the Affirmation or Reverſal of the Judgment, which Affirmation or Reverſal is enter'd upon the Record from whence the Writ of Error was tranſcribed; ſo that this Court may, if affirmed, award Execution thereupon; if revers'd award a Writ of *Sci. fa.* for Reſtitution thereupon, if the Money be levied, or elſe give ſuch Judgment thereupon as ought to have been given. *Hill.* 23 *Car.* 1. *B. R.* For Execution ought always to iſſue out of this Court, where the Judgment was given, upon the affirming thereof; and the Writ of Error was only to try whether the Judgment was good; and not to alter the Way in making out of Execution.

How it is when the Lords have reverſed or affirmed a Judgment.

A **By** the Statute of 8 & 9 *W. cap.* 10. *ſect.* 6. *For the better preventing of Vexatious Suits*, it is enacted, That if any Plaintiff die after an Interlocutory, and before a Final Judgment, the Action ſhall not abate, if ſuch Action might be originally proſecuted and maintained by the Executors or Adminiſtrators of ſuch Plaintiff. And if the Defendant die after ſuch Interlocutory Judgment, and before Final Judgment therein obtained, the ſaid Action ſhall not abate if ſuch Action might be originally proſecuted or maintained againſt the Executors or Adminiſtrators of ſuch Defendant. And that the Plaintiff, or, if he be dead after ſuch Interlocutory Judgment, his Executors or Adminiſtrators, may have a *Sci. fa.* againſt the Defendant (if living) after ſuch Interlocutory Judgment; or if he died after, then againſt his Executors or Adminiſtrators, to ſhew Cauſe why Damages in ſuch Action ſhould not be aſſeſſed and recovered by him or them.

Where the Plaintiff or Defendant die after ſuch Interlocutory Judgment, the Action ſhall not abate, 8 & 9 W. cap. 10. Sect. 6.

B **And** if the Defendant, his Executors or Adminiſtrators, ſhall appear at the Return of the Writ, and not ſhew any ſufficient Matter to arreſt the Final Judgment, or being returned, ſummoned, or after two *Nichils* returned ſhall make Default, then a Writ of Inquiry of Damages ſhall be awarded, which when executed and returned, Judgment Final ſhall be given for the Plaintiff, his Executors or Adminiſtrators, proſecuting of ſuch Writ of *Scire facias* againſt ſuch Defendant, his Executors or Adminiſtrators.

C **That** if there be two or more Plaintiffs or Defendants, and if one or more of them ſhall die; if the Cauſe of ſuch Action ſhall ſurvive to the ſurviving Plaintiff or Plaintiffs, or againſt the ſurviving Defendant or Defendants, the Writ or Action ſhall not be thereupon abated; but ſuch Death being ſuggeſted upon the Record, the Action ſhall proceed at the Suit of the ſurviving Plaintiff or Plaintiffs againſt the ſurviving Defendant or Defendants.

See *Cro. Jac.* 19. *pl.* 4.

D **Where** it appears to the Court that the Defendant's Title is not good, but the Plaintiff hath not ſet forth a good Title for himſelf in his Declaration, the Court ſhall never give him Judgment: For it is not ſufficient for the Plaintiff to ſay, that

Plaintiff ſhall not have Judgment, tho' the Defendant's Title be not good, if his Declaration ſet not forth a good Title for himſelf.

the Defendant hath no Title, *ergo* I have one; but every Plaintiff muſt recover by his own Strength, not the Defendant's Weakneſs. *Vaugh.* 60.

Priority of Poſſeſſion found for the Plaintiff, and no Title for the Defendant, Plaintiff ſhall have Judgment.

A **In** Ejectment, if it appears by the Record of a ſpecial Verdict, That the Plaintiff had Priority of Poſſeſſion, and no Title was found for the Defendant, the Plaintiff ſhall have Judgment. 2 *Saund.* 112.

The Court will vacate a Judgment entered contrary to a Rule of Court.

B **If** a Judgment be enter'd contrary to the Rule of Court made to ſtay the Entry of it, the Court upon Motion will vacate the Judgment, and puniſh the Party that entered it. *Mich.* 22 *Car. B. R.* for his Diſobedience to the Court.

There can be no Judgment on an imperfect Verdict.

C **Where** a Verdict is imperfect, there can be no Judgment given upon it; but the Court will grant a new *Venire facias* to ſummon another Jury to try the Iſſue again: *Mich.* 23 *Car. B. R.* For the Parties ſhall not be compelled to go farther back in their Proceedings than where the Error was made, and that was by the Jury in finding an imperfect Verdict.

If the Sum in Judgment be written in Figures, it is Error.

D **In** a Judgment given for the Plaintiff to recover a Sum of Money, the Sum muſt not be written in Figures; for if it be it is Error, but muſt be expreſſed in Words at length: *Mich.* 23 *Car. B. R.* For a Judgment conſiſts in Words, and Words are made of Letters, and not of Figures, which can ſpell nothing; and Figures may eaſily be alter'd.

If a Judgment be given on an Iſſue where Matter of Law is depending in that Cauſe on another Iſſue, yet the Judgment is good.

E **If** a Judgment be given upon an Iſſue tried in a Cauſe wherein there is alſo Matter of Law in diſpute upon another Iſſue depending in that Cauſe, before the Matter in Law be determined, yet the Judgment is good: *Hill.* 23 *Car. B. R.* For the Cauſes have no depending one upon the other.

Entire Judgment cannot be revers'd as to Part, and ſtand good for the other Part.

F **Where** a Judgment is entire it cannot be reverſed in Part, and ſtand good as to another Part; but if it be not an entire Judgment it may: *Trin.* 24 *Car. B. R.* For an entire Judgment cannot be divided to make one Part of it good, and another Part of it to be erroneous.

If Declaration be good in Part, and inſufficient in Part, and Defendant demurs to the Whole, Plaintiff ſhall have Judgment for what is well laid, and be barred for the Reſidue.

G **But** in an Action where Damages are to be recovered, if the Declaration be good in Part, and inſufficient in Part, and the Defendant demurs upon the entire Declaration, the Plaintiff ſhall have Judgment for that which is well laid, and ſhall be barr'd for the Reſidue: 2 *Saund.* 379, 380. *Vide* 1 *Saund.* 285, 286. *Vide Poſtea.*

A If an Avowry be inſufficient, and the Jury find againſt the Avowant, Judgment ſhall not be reverſed for Error in the Plea in Bar, or other ſubſequent Proceedings. 2 *Saund.* 319.

Avowry inſufficient, and found againſt the Avowant, Judgment ſhall not be reverſed for the Error in the Plea.

B If in Debt by Bill upon three Bonds, it appears that one of them is not forfeited, yet the Plaintiff ſhall have Judgment for the other two Bonds. 1 *Saund.* 286.

Debt upon three Bonds, one of them is not forfeited, yet Plaintiff ſhall have Judgment on the other two.

C And if Debt be brought againſt Executors upon a Bond, and a ſimple Contract together, and they demur upon the whole Declaration, the Plaintiff ſhall recover his Debt upon the Bond, and ſhall be barred for the other. *Ibid.*

Debt againſt Executors upon a Bond and ſimple Contract, they demur to the whole Declaration. Plaintiff ſhall recover his Debt upon Bond, and be barred for the other.

D Alſo where in Debt upon the Statute of Uſury for two ſeveral twenty Pounds, the Plaintiff declared inſufficiently for one of them, the Plaintiff after Verdict or Demurrer ſhall recover the twenty Pounds, for which he had well declared, and ſhall be barr'd for the other. *Ibid.*

Debt on the Statute of Uſury for two ſeveral Sums. Plaintiff declares inſufficiently for one of them, he ſhall recover the other.

E If there be three Replications, and one of them ſuperfluous, yet the Plaintiff may have his Judgment upon the two others, which are ſufficient. 1 *Saund.* 338.

Three Replications, one of them ſuperfluous; yet the Plaintiff ſhall have Judgment on the other two.

F Where in pleading an Award all that which is to be performed on one Part is omitted, the Plaintiff ſhall not have Judgment for the Non-performance of the Award. *Idem* 327.

In pleading an Award, all to be done on one Part is omitted, Plaintiff ſhall not have Judgment for Non-performance.

G If any Thing be enter'd in a Judgment, which is not mentioned in the Plaintiff's Declaration upon which the Judgment is given, the Judgment is not good: *Paſch.* 1650. *B. S.* Becauſe it is in Part given for that which the Plaintiff ſued not for, and ſo the Court had no Conuſance of it.

If any Thing be enter'd in a Judgment that is not in the Declaration, the Judgment is not good.

H Where it appears upon the whole Record, that the Plaintiff hath no Cauſe of Action, he ſhall never have Judgment. 8 *Rep.* 120. 133. *b.*

Where it appears the Plaintiff hath no Cauſe of Action, he cannot have Judgment.

I If a Judgment be unduly obtained, and ſufficient Proof thereof be made unto the Court, the Court will vacate the Judgment, and reſtore the Party damnified by it to be in the ſame Condition that he was in before the Judgment, and oftentimes makes the Aggreſſor pay Coſts.

The Court will vacate a Judgment unduly obtained.

K In an Avowry for Rent, Part was found for the Plaintiff, and Damages and Coſts, which ſhould not have been, and Part for the Avowant; the finding of Damages and Coſts for the Plaintiff, is void; for when Part is found for the Avowant, he ſhall have a Return with Damages and Coſts. *Cro. Jac.* 473. *pl.* 3.

In an Avowry for Rent, Part found for the Plaintiff, Part for the Avowant, the Avowant ſhall have Damages, Coſts and Return, and not the Plaintiff.

How the Judgment in Debt to be where Part is found for the Plaintiff, and Part for the Defendant.

A **In** Debt, Part is found for the Plaintiff and the Defendant is acquitted of the Reſidue, the Judgment muſt be *quod quer' in miſericordia* for that Part whereof the Defendant is acquitted; otherwiſe it is Error. *Cro. El.* 699. *pl.* 12.

Judgment reverſed, becauſe the Money not due.

B **Where** a Judgment was reverſed, becauſe it appeared that the Money demanded was not yet payable. 2 *Saund.* 107.

A Judgment contrary to the Verdict is void.

C **A Judgment** which is given contrary to the Verdict, which was found in the Cauſe, is a void Judgment. *Mich.* 22 *Car. B. R.* For the Judgment is to be warranted by the Verdict, and is but the Affirmance of the Verdict, and therefore it muſt not contradict the Verdict, but concur with it in all Things.

Judgment arreſted for Incertainty of the Verdict.

D **Where** Judgment was arreſted for the Incertainty of the Verdict. *Raym.* 200. and 154, 155. 2 *Saund.* 171.

Plaintiff releaſed his Demand as to Part, and took Judgment for the reſt.

E **In** Ejectment for a hundred Acres of Bog and other Things; the Plaintiff releaſed his Demand to the other Things, and took Judgment for the Reſidue. *Raym.* 395.

Treſpaſſes for taking the Mare *Ipſius quer'* and other Goods, but ſays not *Ipſius quer'*. Plaintiff may have Judgment for the Mare, but releaſe the Action for the reſt.

F **Treſpaſs** *Vi & armis* for taking the Mare *Ipſius quer' necnon bona & catalla ſeqen'*, *viz.* and ſums them up, but doth not ſay that they were the Goods *Ipſius quer'*; and on Demurrer, reſolved the Plaintiff might have Judgment for the Mare, and releaſe the Action for the Reſidue. *Id.* 395.

If Judgment be given for more than the Plaintiff demands in his Declaration, it is erroneous; but he may enter a *Remiſit Damna* for Part.

G **If** Judgment be given for more than the Plaintiff doth demand in his Declaration, this Judgment is erroneous; but the Plaintiff in entring up of his Judgment, may enter a *Remiſit Damna* for Part. *Paſch.* 23 *Car. B. R.* For to give one more than is his Due, is as equally Injuſtice, as to deny any one that which is his Due; and it ſhall be preſumed that the Plaintiff beſt knows what is his Due, and will demand it to the full; or if he ſhould not, yet it ſufficeth, if he will be content to demand leſs.

Caſe for ſcandalous Words ſpoken at ſeveral Times, and Damages found ſeverally; Judgment may be for ſome of the Words, and a *Remiſit Damna* for the others.

H **If** an Action of the Caſe be brought againſt one for ſpeaking of divers diſtinct ſcandalous Words of another, and the Damages are found in the Verdict or Writ of Inquiry ſeverally for them, *viz.* So much Damages for ſpeaking of ſuch of the Words, and ſo much Damages for ſpeaking of ſuch other of the Words; there Judgment may be given for ſpeaking of ſuch of the Words as the Plaintiff was dammified by, and a *Remiſit Damna* for the other Words which are not actionable: But if the

Damages

A Damages be laid entire for ſpeaking of all the Words, and ſome of the Words be not actionable, there the Judgment is erroneous; for the Court cannot apportion the Damages according to thoſe Words which were actionable, and thoſe which were not.

But if the Damages be laid entire, and ſome of the Words not actionable, the Judgment is erroneous.

B **See** the Difference between Judgments in Debt and Treſpaſs, where one joint Defendant is acquitted. 1 *Saund.* 217.

Difference between Judgments in Debt and Treſpaſs, where one Defendant is acquitted.

C **In** Conſpiracy againſt three; if two are acquitted, the Plaintiff cannot have Judgment againſt the third. 1 *Saund.* 239, 240.

In Conſpiracy againſt three, two are acquitted. Plaintiff cannot have Judgment againſt the third.

D **A Judgment** in an Action of Detinue is given conditionally, that is to ſay, That the Plaintiff recover the Thing itſelf, which is detained, and Damages; and if any Thing be loſt, that then he recover the Value of the Thing loſt, *Roll. Abr.* 101. *Hill.* 22 *Car. B. R. viz.* Damages to the full Value of the Thing itſelf, and alſo for the detaining of it, if there be any ſuch Damage.

How Judgment is given in Detinue.

E **A Judgment** was reverſed in this Court for Tautology uſed in it. *Mich.* 22 *Car. B. R.* That is, for repeating the ſame Thing over and over; for the Law will not ſuffer Barbariſms in the Proceedings thereof; for that will in the Concluſion bring all Things into Confuſion.

Reverſed for Tautology.

F **Judgments** given in inferior Courts muſt be enter'd, *Ideo conſideratum eſt per Curiam,* in Words at length, and not *Ideo conſideratum eſt,* as the Uſe is in the Courts at *Weſtminſter*; for if they do not enter them ſo, they are erroneous there, tho' it be not ſo in the Courts at *Weſtminſter. Trin.* 23 *Car. B. R.* For inferior Courts are tied ſtrictly to obſerve their antient Forms, and not vary from them; for if they ſhould be permitted to vary from them, many Inconveniencies would quickly follow by the Unskilfulneſs of the Clerks, to the great Prejudice of the People.

How Judgments muſt be entered in inferior Courts.

G **A Judgment** in an inferior Court was entered, *Ideo conceſſ. eſt per Cur.* Whereas it ought to have been *conſiderat. eſt per Curiam*; and for this Cauſe reverſed, *Rain* verſ. *Atkinſon, Mich.* 16 *Car.* 2. *in B. R.*

Judgment reverſed, it being enter'd *Conceſſ. eſt, &c.* for *Conſiderat. eſt, &c.*

H **A Judgment** was reverſed becauſe it was enter'd thus, *Ideo conſiderat. eſt ad eandem Cur.* whereas it ought to be *per eandem Cur. Hill.* 1649. 30. *Jan.* and 1 *Feb.* For it might be conſidered at the Court which may be meant only the Place where the Court is held, and yet not be the Act of the Court, *viz.* of the Judges of the Court.

Alſo becauſe it was *ad eandem Cur.* for *per eandem.*

In what Courts the Entry is general, without ſaying *per Cur.*

A **Where** and in what Courts the Entries of the Judgments are *Ideo conſideratum eſt* generally, without ſaying *per Cur.* and where, and in what *per Cur.* 1 *Saund.* 74.

How to be upon a Nonſuit after Evidence. *Nil capiat per billam. Miſericordia.*

B **Aſſigned** for Error, That where the Plaintiff in Treſpaſs was nonſuited after Evidence, the Judgment is, *Quod* the Plaintiff *nil capiat per billam*, which is a Bar; whereas it ought to have been only *in miſericordia quia non proſecutus eſt:* But held to be no Error, for all the Precedents of the late Times are ſo.

Quod quer' & pleg' in miſericordia pro falſo clamore, for *Quia non proſecuti ſunt.*

C **Alſo** the Judgment is, *Quod quer' & plegii ſui ſint in miſericordia pro falſo clamore ſuo*, whereas it ought to have been *Quia non proſecuti ſunt*; for it ought not to be *pro falſo clamore ſuo* but where it is after Verdict, or Judgment upon a Demurrer: And held to be Error. *Cro. Jac.* 213. *pl.* 7.

Where the Plaintiff miſtakes his Matter, and there is a Judgment againſt him; and then he brings a new Action, and declares right; the firſt ſhall not be pleaded in Bar to him.

Replies, That Judgment was not given on the Merits of the Cauſe.

D **An** Action was brought, and there was a Fault in the Declaration in the not aſſigning of a good Breach in a Covenant; whereupon there was a Demurrer, and Judgment given, *Quod querens nil capiat per billam ſed pro falſo clamore ſuo ſit inde in miſericordia.* Afterwards the Plaintiff brings another Action for the ſame Matter, and aſſigned the Breach as it ought to be; whereupon the Defendant pleads in Bar the former Action, and that it was barred by the Judgment upon the Demurrer: The Plaintiff replied, That the Judgment was not given upon the Merits of the Cauſe, but upon a Miſtake in the Declaration, in not ſaying, [*and ſo ſet forth how it ſhould have been.*] The Defendant demurr'd, alledging, That the firſt Judgment was a Bar; but the Court gave Judgment for the Plaintiff. *Hill.* 34 & 35 *Car.* 2. *B. R. Rot.* 847. See *Dyer* 371. and 1 *Mod.* 207. how the Judgment muſt be entered up.

How the Judgment muſt be where Judgment is given for the Defendant upon a Demurrer to his Plea.

E **Where** there is a Declaration and there is a Special Plea, and a Demurrer to the Plea, and a Judgment pronounced for the Defendant, the Judgment muſt not be that the Plea is good in Law, for that would be a perpetual Bar to the Plaintiff; but it muſt be *Quod querens nil capiat per billam*; and then he may amend his Declaration, and bring his Action *de novo.*

What is a Final Judgment upon a Demurrer.

F **If** upon a Demurrer to a Declaration the Judgment is, *Quod querens nil capiat per Billam ſed pro falſo clamore ſuo ſit inde in miſericordia*; this Judgment is final, and a Bar to any other Action to be brought for the very ſame Matter: *Hill.* 34 & 35 *Car.* 2. *Rot.* 847. *B. R.* But the Plaintiff may afterwards make his Declaration right, and then proceed, and the Pleading of this Judgment ſhall be no Bar. But if this Judgment ſhould be pleaded in Bar, then he muſt reply ſpecially, and ſhew where the Fault was in his Declaration.

But if the Matter will bear an Amendment, the Plaintiff may do it in another Action.

A An erroneous Judgment is a good Bar for an Executor in an Action brought againſt him; for an erroneous Judgment until it is revers'd, is a good Judgment. *Vaugh.* 94.

Erroneous Judgment is good till reverſed.

B If a Warrant of Attorney to confeſs Judgment be made, without mention of any Term when the Judgment ſhould be, it may be entered within a Year after the Date of it. But if it be more than a Year, it cannot be enter'd without an Affidavit, that the Parties are living, and the Money not paid; and upon this Affidavit, there muſt be a Motion for a Rule of Court for it.

If there be no Term mentioned in the Warrant, it ſhall be intended to be the next Term.

How the Affidavit to be.

C It is dangerous to take a Judgment acknowledg'd in the Vacation, as of a preceding Term; but if any ſuch Judgment be taken, the Warrant of Attorney to confeſs the ſame muſt bear Date before, or in the Term whereof it is confeſs'd; but the ſafeſt Way is to make it a Judgment of the ſubſequent Term: *Mich.* 1649. *B. S.* Yet it is common Practice to do it.

It is not ſafe to take a Judgment in the Vacation, as of the preceding Term.

D If a Warrant of Attorney to confeſs Judgment be made without mention of any Term when the Judgment ſhould be, it ſhall be intended the next Term after the Date of it. *Hill.* 16 *Car.* 2. *R. in B. R.*

If the Warrant to confeſs Judgment mentions not any Term, it ſhall be intended the Term after the Date.

E If one take a Judgment which is enter'd he cannot conſent to vacate it, becauſe it is a Record: *Mich.* 1649. *B. R.* But he may acknowledge Satisfaction upon Record, and ſo make the Judgment fruitleſs.

A Man cannot conſent to vacate a Judgment after 'tis enter'd.

F Where a Verdict is found againſt the Defendant upon *Plene adminiſtravit*, that he hath Aſſets ſufficient to ſatisfy the Debt; the Judgment upon this Verdict muſt be enter'd *De bonis teſtatoris ſi tantum in manibus ſuis habeat adminiſtrand. & ſi tantum in manibus ſuis non habeat tunc dampna de bonis propriis defendentis*, as it is in all other Caſes againſt Executors; but upon making out a *Fieri facias de bonis teſtatoris* upon this Judgment, and carrying of it to the Sheriff, and ſhewing of him the *Poſtea* where the Aſſets are found, he will return a *Devaſtavit* of Courſe, and upon that Return the Plaintiff may have a *Fieri facias de bonis propriis* of the Executor, and upon a *Nulla bona* returned, then he may have a *Ca. ſa.* againſt his Body for the whole Debt and Damages.

How Judgment muſt be entered when on *Plene adminiſtravit* pleaded, it is found that the Defendant hath Aſſets ſufficient.

Debt againſt two Executors who plead they have not Aſſets: And found that one had Aſſets, the other not. Plaintiff ſhall have Judgment againſt him who had the Aſſets.

If a Man bring an Action of Debt againſt two Executors, and they plead they have not Aſſets, and thereupon Iſſue is joined, and it is found that one of the Executors had Aſſets at the Time of the Action brought, but that the other Executor had not Aſſets, the Plaintiff ſhall have Judgment to recover the Debt againſt that Executor who was found to have Aſſets, and a *Nil capiat per billam* ſhall be entered againſt the Plaintiff, as to the other Executor who was found to have no Aſſets: *Mich.* 23 *Car. B. R.* For the Poſſeſſion that one Executor hath of the Teſtator's Goods, is not the Poſſeſſion of the other Executor, and ſo one may have Aſſets and the other not. *Vide* 1 *Saund.* 216, 217. A

Riens en lour mains pleaded by Executors, Plaintiff ſhall have Judgment, to be executed when Aſſets ſhall happen.

Upon *Riens en lour mains* pleaded generally by Executors to an Action of Debt upon Bond, the Plaintiff may have his Judgment preſently to be executed when Aſſets ſhall happen: 2 *Saund.* 226. And in this Caſe a *Miſericordia* was entered againſt the Executors for their Delay, becauſe it was not entered on Record, *Quod venerunt primo die. Id.* 227. *Vide Poſtea* for the Judgment. B

Debt after a Judgment on Allegation of a *Devaſtavit* by an Executor.

Debt (upon Allegation of a *Devaſtavit* by an Executor) after a Judgment obtain'd againſt the ſaid Executor, *Et judic. pro quer.* 1 *Saund.* 216, 217. C

How Judgment to be if Defendant pleads *Ne unques Executor*, and it is found againſt him.

If the Defendant plead *Ne unques Executor*, and it be found againſt him, yet Judgment ſhall be *De bonis Teſtator. ſi &c.* before he ſhall be charged *De bonis propriis.* 1 *Saund.* 217. *Vide Eund.* 307, 308. D

How when a Covenant is broken by an Executor.

Where a Covenant is broken by the Executor, yet the Judgment againſt him muſt be *De bonis Teſtatoris ſi tantum, &c.* 1 *Saund.* 112. but not if they are not nam'd Executors. *Ibid.* E

A ſpecial Replication on *Plene adminiſtravit* pleaded.

Upon *Plene adminiſtravit* pleaded, the Plaintiff comes and ſays, *And the ſaid* (Plaintiff) *inaſmuch as the ſaid* (Defendant) *doth not deny by his Plea aforeſaid, but the ſaid Bond now brought into this Court is the Deed of the ſaid* M. *the Teſtator; not but that the Debt therein ſpecified is a true and juſt Debt, not yet paid, ſatisfied, or otherwiſe diſcharged; and for that the ſaid* (Plaintiff) *cannot deny but that the ſaid* (Defendant) *hath not, nor had he at the Day of ſuing out the original Writ of the ſaid* (Plaintiff) *or at any time ſince in his Hands, unadminiſter'd any Goods or Chattels, which of the ſaid* M. *the Teſtator at the Time of his Death. Prays Judgment of the Debt aforeſaid by him above demanded of the Goods and Chattels of* M. *the Teſtator, at the time of his Death, and which ſhall hereafter come to the Hands of the ſaid* (Defendant) *to be adminiſtred.* And upon this Prayer F

Judgment is entered, and a Writ of Error brought into the King's Bench, and there Judgment affirmed, and from thence brought into the Parliament, and Judgment was alſo affirmed. *Mich.* 22 *Car.* 2. 2 *Saund.* 216, 217, *&c.* 226, 227.

A **Where** a Covenenant is broken by the Executor, yet the Judgment againſt him muſt be *De bonis teſtatoris ſi tantum, &c.* 2 *Saund.* 112.

How Judgment againſt an Executor upon a Covenant broken.

B **Where** an Action is brought upon the *Aſſumpſit* of the Teſtator, there the Judgment muſt be *De bonis teſtatoris:* But where it is upon the Promiſe of the Executor, there it muſt be of his own Goods. 1 *Leon.* 44.

How Judgment muſt be enter'd againſt Executor or Adminiſtrator.

C **An** erroneous Judgment in Chancery is reverſable in the King's Bench. *Dyer* 315.

Erroneous Judgment in Chancery reverſable in *B. R.*

D **If** a Defendant be attainted of Special Matter by Judgment or Demurrer, the *Vi & armis* ſhall not be tried, altho' he had taken Iſſue upon it; but he ſhall be fined, and a *Capiatur* awarded againſt him. 1 *Saund.* 81, 82.

If Defendant be attainted of Special Matter by Judgment, he ſhall be fined, and the *Vi & armis* ſhall not be tried.

E **Where** one ſhall have Judgment according to the Value he counts for. 1 *Lut.* 63.

Where Judgment ſhall be given according to the Value the Plaintiff counts for.

F **See** Judgment for the Defendant upon Demurrer, to have Coſts according to the new Statute. 2 *Lut.* 1418.

Judgment for Defendant on Demurrer to have Coſts.

G **A Man** is to have Judgment by this Court to loſe his Hand, Lands and Goods, and perpetual Impriſonment, for ſtriking, or endeavouring to ſtrike, a Judge ſitting in Judgment, or ſtriking a Juror in the Preſence of a Judge, or for ſtriking in *Weſtminſter-Hall*, ſitting the Courts. 22 *Ed.* 3. 13. *Fitz. Judgment* 174. *Staundf.* 38. So it is of one that reſcueth ſuch an Offender. 22 *E.* 3. *Aſſ.* 25.

What Judgment a Man ſhall have for ſtriking a Judge, Juror, *&c.* and for ſtriking in *Weſtminſter-Hall*, ſitting the Courts.

H **Where** there are ſeveral diſtinct Judgments againſt the Defendant, one of thoſe Judgments may be reverſed as erroneous, and yet the other Judgments ſtand in Force. 21 *Car.* *B. R.* Where Damages are ſeveral, tho' the Coſts are entire. *Hob.* 5.

Several Judgments againſt one Defendant one of them may be reverſed, and the other ſtand in Force.

I **All** Judgments given in any Court of Record, before the late memorable Act of Parliament, ought to have been entered in *Latin*; and if they had been in *Engliſh*, they were reverſable by a Writ of Error. 21 *Car.* *B. R.*

Judgments enter'd in *Engliſh* are reverſable by Error.

K **There** is a Difference between a Cuſtomary Judgment, and a Judgment given according to the Common Law. *Trin.* 22 *Car.* *B. R.* A Cuſtomary Judgment is a Judgment given within ſome particular Juriſdiction, by Virtue of ſome Cuſtom uſed there.

Difference between a Cuſtomary Judgment, and one according to Common Law.

Debt lies on a Judgment of a Writ of Error.

A **Debt** lies upon a Judgment as well after a Writ of Error as before. *Raym.* 100.

Where Judgment is arreſted for miſpleading, the Court will grant a Repleader.

B **Where** a Judgment is arreſted only for miſpleading, there the Court will grant a Repleader. *Mich.* 22 *Car. B. R.* To the End a good Judgment may be given, which cannot be upon an ill Pleading. *Vide ante* **Iſſue.**

Judgment on Failure of Record, before Iſſue, reverſed.

C **Where** Judgment was given upon Failure of the Record before Iſſue joined was reverſed. 1 *Saund.* 97, 99.

The Court will not ſuffer a Surety to acknowledge a Judgment.

D **This** Court will not now ſuffer a Surety that is bound with one in an Obligation to plead for the Principal to an Action brought upon this Obligation, and acknowledge a Judgment againſt him, although formerly it hath been done.

In Actions removed from inferior Courts Allowance is made for the Charges there.

E **Where** Actions are removed out of inferior Courts into this Court, the Maſter of the Office always upon the taxing of Coſts, makes an Allowance for the Charges in the inferior Court.

Plaintiff may accept of a Plea after Judgment ſign'd.

F **Altho'** the Plaintiff have ſigned his Judgment againſt the Defendant, yet he may wave it if he will, and accept of a Plea from the Defendant, *Trin.* 23 *Car. B. R.* and 24 *Car. B. R*, For the ſigning of it doth not make it a Record of the Court; but if it were entered he could not wave it without Leave of the Court.

What is a Special Judgment.

Where the Plaintiff muſt releaſe his Damages, and yet may have his Coſts.

G **A Special** Judgment is where one brings an Action for divers Things; as for Example, A Man brings an *Ejectione firmæ pro toſto, croſto, &c.* and the Plaintiff hath a Verdict upon the whole Declaration, and doth wave ſome one or more of the other Things for which the Action is brought; in ſuch Caſe he muſt releaſe his Damages to all, and yet he may have Coſts of Suit; *Trin.* 23 *Car. B. R.* for the Coſts have no Relation to the Damages: The Damages are given entirely by the Jury; but the Coſts of Suit are increaſed, and ſigned by the Maſter of the Office, who can beſt judge of them.

If a Clerk of *B. R.* refuſe to appear after Delivery to him of the Copy of a Bill filed againſt him, the Plaintiff may enter Judgment by *Nil dicit*.

H **If** any Clerk of this Court will not appear to an Action that is brought here againſt him after a Copy of a Bill filed, delivered to him, the Plaintiff may, after his Rules for Pleading are out, enter Judgment againſt him by *nihil dicit*, by *Woodward*, Clerk of the Court. For a Clerk of the Court is ſuppoſed to be always preſent in Court; and therefore if he will not appear, yet it ſeems it ſhall be all one as if he had appeared and refuſed to plead. *Trin.* 23 *Car. B. R.*

The Court will not give Judgment againſt Law, tho' both Plaintiff and Defendant agree to it

I **The** Court will not give a Judgment which they know would be againſt the Law, altho' the Plaintiff and Defendant do agree to have ſuch a Judgment given. *Trin.* 23 *Car. B. R.* For the Judges are to do equal Juſtice according to their beſt Skill, and not to err wilfully, and againſt their Knowledge, to pleaſe the Parties.

A **Judgment** in a real Action reverſed, becauſe it was *quod teneat tenementa*, where it ought to be *quod recuperet terminum de tenementis*. 1 Lev. 99.

Judgment reverſed becauſe it was *quod tenept*, &c. for *quod recuperet*, &c.

B **Judgment** ought not to be given upon Default in real Actions, but a *Grand Cape* upon Default before Appearance, and a *Petit Cape* upon Default after Appearance. *Ibid.* 105.

It muſt not be given on Default in real Actions.

C **If** one bring a Writ of Error to reverſe a Judgment given in the Common Pleas, and do not remove the Record into this Court, then the Plaintiff gives him a Rule to certify the Record within eight Days, which if he doth not, a *Nolle Proſequi* may be entered upon the Writ of Error, and the Plaintiff may ſue out his Execution in the Common Pleas, and if there be a *Superſedeas* in the Sheriff's Office, he may have a Clauſe in his Execution to this Effect, *viz. Brevi Domini Regis de Superſedeas ſuper Brevi de Errore prius in contrarium inde direct. in aliquo non obſtante.* Mich. 23 Car. B. R. becauſe he hath made no Proceedings upon the Writ of Error, and ſo it may be accounted but colourably brought.

Writ of Error to reverſe a Judgment in *C. B.* and the Record not removed; a *Nolle proſequi* may be entered on the Writ of Error.

D **Where** upon a Writ of Error, a Judgment given in *C. B.* for abating a Writ in a real Action, is reverſed in *B. R.* the King's Bench ſhall proceed upon the Original Writ, and ſhall give ſuch Judgment as *C. B.* ought to have given if the Writ had not been abated. 2 *Saund.* 256.

Judgment in *C. B.* for abating a Writ, revers'd in *B. R.* *B. R.* ſhall proceed on the Original, and give Judgment as *C. B.* ought to have done.

E **Also** where in a Writ of Error to reverſe an erroneous Judgment given in *Ireland* or *Wales*; the Court of *B. R.* ſhall give ſuch Judgment as the Courts there ought to have given. *Id.* 257.

Likewiſe in a Writ of Error to reverſe a Judgment in *Ireland* or *Wales*.

F **And** where Judgment ſhall be given, notwithſtanding that the Jury have aſſeſs'd Coſts, where they were not recoverable. *Ibid.*

Where Judgment ſhall be given tho' the Jury have aſſeſſed Coſts, where not recoverable.

G **If** a Priſoner, who is indicted for Felony, will not plead to the Indictment, he is by the Law to be preſſed to Death; but if a Priſoner indicted for Treaſon, will not plead at all to the Indictment, or anſwers impertinently, and not to the Purpoſe, Judgment ſhall be given againſt him as if he were found Guilty: *Paſch.* 23 *Car. B. R.* by *Roll*, Juſtice, in Sir *John Stowel*'s Caſe, as I remember *Qu. differentiam.* It ſeems to be in reſpect of the heinouſneſs of the Treaſon above Felony.

One indicted for Felony, who will not plead, ſhall be preſſed to Death: But if for Treaſon, Judgment as if he were found Guilty.

H **See** Judgment in Treaſon for Clipping and Coining. 2 *Lev.* 98.

Judgment for Clipping and Coining.

I *Vide* 2 *Saund.* 253, 254. Where tho' the Verdict paſſed for the one Party, Judgment was given at the Prayer of the other Party.

Verdict for one Party ty, and Judgment at the Prayer of the other.

Judgment upon a dilatory Rejoinder.

A **Where** Judgment was ſign'd upon a dilatory Rejoinder. 1 *Saund.* 318.

Judgment againſt two, one of them an Infant, the whole Judgment is void.

B **Where** one entire Judgment is given againſt two ſeveral Perſons, and one of them is an Infant, the whole Judgment is void, unleſs the Infant be a joint Executor with the other Party: *Trin.* 24 *Car. B. R.* For it being void as to the Infant, and being an entire Judgment which cannot be divided, it muſt neceſſarily be void as to the other, and ſo void *in toto*.

Plaintiff demurs, Defendant joins; if Plaintiff will not maintain his Demurrer, Judgment ſhall be given againſt him.

C **If** the Plaintiff do demur to the Defendant's Plea, and the Defendant do join in the Demurrer, if the Plaintiff will not maintain the Demurrer, Judgment ſhall be given againſt him: *Trim.* 24 *Car. B. R.* For thereby it is implied, that he confeſſeth the Defendant's Plea to be good, and conſequently that he hath no Cauſe of Demurrer thereunto.

If in an Ejectment to try the Title of Land the Owner will not ſave the Party harmleſs, he may confeſs Judgment to the Plaintiff.

D **If** in an Action of Treſpaſs and Ejectment brought to try the Title of the Land, the Owner of the Land, whoſe Title is concerned, will not ſave the Party that is made Ejector harmleſs from all Prejudice that may befall him by Reaſon of the Suit; he may confeſs Judgment unto the Plaintiff for the Land in Queſtion: *Mich.* 1656. *B. S.* To avoid farther Trouble and Charge by reaſon of the Suit which concerns him not, either in Gain or Loſs; but if the Owner of the Land will ſave him harmleſs, the Court will not ſuffer him to confeſs a Judgment.

If an Action be brought on a Bail-Bond, neither the Plaintiff in Ejectment, nor the Sheriff, if Plaintiff, ſhall releaſe the Action.

E **The** Court will not ſuffer the Plaintiff in an Ejectment, nor the Sheriff where he is Plaintiff, in an Action upon a Bail-Bond, to releaſe the Action, they being ſuch Perſons as the Court takes Notice of to be but in the Nature of Truſtees for other Perſons, and are anſwerable to and puniſhable by the Court.

Several Errors for which a Judgment was reverſed.

F **A Judgment** was reverſed for theſe Errors, becauſe the Time when the Judgment was given was in Figures. 2. Becauſe the Sum recovered was expreſſed in Figures. 3. The *Venire facias* was with an *&c.* and 4. The Cauſe of Action did not appear by the Record to be within the Juriſdiction of the Court where the Judgment was given: 1659. *Hill. B. S.* This was a Judgment given in an inferior Court, and all theſe Exceptions were ſaid to be good Exceptions, and each of theſe is ſufficient to reverſe a Judgment.

Reverſed for Error in the *Venire*.

G **Where** a Judgment was reverſed for Error in the *Venire facias*. 2 *Saund.* 393.

After Iſſue joined the Plaintiff may accept of Judgment without going to Trial.

H **After** an Iſſue is joined to be tried by the Plaintiff and the Defendant, the Plaintiff may if he will, without going to a Trial, accept of a Judgment from the Defendant without any Verdict in the Caſe, which Judgment muſt be by *Relicta verificatione cognovit Actionem:*

nem: Paſch. 1650. *B. S.* 21 *Maii.* For the Defendant is not prejudiced by it if he will acknowledge the Judgment, and the Plaintiff could have recovered no more if he had had a Verdict, and he may wave his Coſts if he pleaſe; but if after Iſſue joined and entered upon Record, the Defendant will, after Notice of the Trial, bring the Iſſue-Roll into Court, and pray, That he may enter a *Relicta verificatione* thereupon, this Court will not do it unleſs the Plaintiff's Attorney will conſent to it; and there may be very good Reaſon for it, becauſe the Defendant knowing that the Plaintiff will recover againſt him if it be but an Action of Treſpaſs, or on the Caſe, *&c.* may, upon a *Relicta verificatione* bring a Writ of Error without putting in of Bail; but after a Verdict the Defendant cannot in any Caſe bring a Writ of Error without putting in of Bail.

A **It** is the ſigning of the Judgment, and taxing of the Coſts by the Judge or Secondary that makes the Judgment: 2 *Julii* 1650. *Trin. B. S.* Becauſe the Coſts are to be mentioned in the Judgment.

What makes the Judgment.

B **A Rule** of Court was made upon a Motion at the Bar, that the Secondary ſhould enter a Judgment in a Cauſe wherein a Trial was to be had, as a Judgment of the Term next preceding the Term wherein the Trial was to be, and that the Secondary ſhould expreſs in the Rule, that the Rule was made by the Conſent of the Plaintiff and Defendant in the Cauſe 2 *Julii* 1650. *B. S.* For *conſenſus tollit errorem*; for otherwiſe the Court would not have made ſuch a Rule to antedate a Judgment, and there was other ſpecial Reaſon, as I remember, for the doing of it, beſides the Conſent of the Parties.

Rule that the Secondary ſhould enter a Judgment in a Cauſe that was to be tried, as of the Term preceding the Trial.

C **The** Courſe for one to acknowledge a Judgment, is for him that doth acknowledge it to give a general Warrant of Attorney to any Attorney, or ſome particular Attorney of that Court where the Judgment is to be acknowledged, to appear for him at his Suit, who is to have the Judgment acknowledged unto him, and to file a Common Bail, and receive a Declaration from him, and to plead *Non ſum informatus*, or by *Cognovit actionem*, or to let it paſs by *Nihil dicit*, and thereupon Judgment is entered of Courſe for want of a Plea. 14 *Nov.* 1650. *B. S. Non ſum informatus*, is as much as to ſay, that he is not informed by his Client what to plead for him.

How to acknowledge a Judgment.

D **A Judgment** upon a *Nihil dicit*, in Caſe, or Treſpaſs, or Covenant, *&c.* is not a perfect Judgment, until the Writ of Inquiry of Damages taken out upon this Judgment be executed; but in Debt it is a perfect Judgment as ſoon as ſigned, and there needs no Writ of Inquiry. 16 *Nov.* 1650. *B. S.* For the Damages are to be expreſſed in the Judgment, which cannot be known what they are, until the Jury impanelled by the Sheriff to inquire of the Damages have found them, becauſe the Damages were never inquired of by the Jury that ſhould have tried

A Judgment on *Nil dicit, &c.* not perfect till the Writ of Enquiry be executed.

the Cauſe, if it had come to a Trial upon a Plea, and an Iſſue joined; but the Debt is certain, and appears in the Declaration.

Special Plea, and Paper-Book made up: If Defendant's Attorney does not join Iſſue within four Days, Judgment may be entered againſt the Defendant.

A **When** a ſpecial Plea is pleaded, and a Paper-Book made up, if the Defendant's Attorney doth not return it to the Plaintiff's Attorney within four Days after he receives it, together with his Hand to the joining of the Iſſue, and the Money for the entring of the Iſſue on his Part, Judgment may be entred againſt him by the Plaintiff's Attorney by Default. 6 *Feb.* 1650. *B. S.*

Special Plea without Counſel's Hand to it is no Plea, and Plaintiff, if his Rules are out, may ſign Judgment.

B **A ſpecial** Plea delivered to the Plaintiff's Attorney, or put into the Office without a Counſellor's Hand to it, is no Plea; and the Plaintiff may, if his Rules are out, and no other Plea pleaded, ſign his Judgment.

In Treſpaſs *quare vi & armis* a *capiatur* muſt be entered on the Judgment, if it be had before the Act of Oblivion was made; but if the Treſpaſs be pardoned by the Act, a *Pardonatur* muſt be entered on the Judgment.

C **By** *Rolle*, Ch. J. in an Action of Treſpaſs brought *quare vi & armis*, a *Capiatur* ought to be entered upon the Judgment, where the Judgment is had before the Act of Oblivion was made; but if Judgment be to be given in an Action brought for a Treſpaſs done before the Act of Oblivion was made, and which is pardoned by the Act, a *pardonatur* ought to be entered upon the Judgment, and then the Judgment muſt be thus, *Et nihil de Fine quia pardonatur*, 1651. *B. S.*

No Judgment to be vacated the laſt Day of the Term.

D **By** *Glyn*, Ch. J. *Paſch.* 1656. It is againſt the Courſe of the Court to vacate a Judgment, or to move for an Attachment the laſt Day of the Term.

How Judgments to be upon caſting Eſſoins.

E **How** Judgments may be given upon caſting Eſſoins. *Vide* 1 *Lut.* 849, 853, 861, 863, *&c.*

Forms of Judgments in *Quare Impedit.*

F **Several** Forms of Judgments given at the Aſſizes in *Quare Impedit. Id.* 904.

Likewiſe in Replevin, where Part is found for the Plaintiff, and Part for the Defendant.

G **The** like where in Replevin Part is found on Verdict, or adjudged on Demurrer for the Plaintiff, and Part for the Defendant. 2 *Lut.* 1193 to 1199.

To what Day a Judgment ſhall relate in the Common Pleas, and to what Day in the King's Bench.

H **A Judgment** in the Common Pleas ſhall relate to the Eſſoin-day of the Term, and ſhall be a Judgment from that Time. *Cro. Car.* 102. *pl.* 2. But a Judgment in the King's Bench ſhall relate only to the firſt Day of the Term.

A Judgment ſigned upon the Day the Rules were out, was held to be irregular.

I **A Judgment** ſigned the very Day the Rules were out, tho' not executed until afterwards, was held irregular and ſet aſide. 5 *Mod.* 205.

A Judgment in Debt was revers'd for want of *ex aſſenſu ſuo per curiam adjudicat'.*

K **In** a Judgment in Debt it was, *Ideo conſideratum eſt quod recuperet* 40s. *pro miſis & cuſtagiis*, omitting the Words *ex aſſenſu ſuo per curiam ei adjudicat'*; and for this Cauſe it was revers'd. *Cro. Jac.* 415. *pl.* 3.

A **In** what Caſes the Judges ſhall give Judgment, according as the very Right of the Cauſe and Matter in Law ſhall appear, without regarding any Imperfections, Omiſſions, or Defects, in any Writ, Return, Declaration, or Pleading, except particularly mentioned for Cauſes of Demurrer, by the Act for the Amendment of the Law, made 4 & 5 *Annæ*. *Vide* Title **Demurrer.**

How the Judges ought to give Judgment.

Stat. 4 & 5 **Ann.**

B *Eat, ſine die*, and *ſit inde quietus*, are both of the ſame Effect. *Cro. Jac.* 211. *pl.* 3.

Eat ſine die, and *ſit inde quietus*, both good.

C **Where** it appeareth to the Court, that the Plaintiff hath recovered a Verdict without Cauſe of Action, the Court will give Judgment for the Defendant. 1 *Plow.* 66. *b.*

Verdict for the Plaintiff, and Judgment for the Defendant.

D **Where** Judgment was given for the Plaintiff, tho' the Iſſue was found againſt him. *Cro. Jac.* 442. *pl.* 15.

Judgment for the Plaintiff where the Iſſue was found againſt him.

E **One** Judgment cannot determine another Judgment, no more than one Obligation can determine another. *Cro. Eliz.* 817. *pl.* 6.

One Judgment cannot determine another.

F **In** Debt upon a Bond, the Judgment is, *Quod recuperet debitum præd'* & 20*s.* *pro damnis occaſione, &c.* and no mention of *pro miſis & cuſtagiis*: And good without it, for *Damna* includes both. *Cro. Jac.* 420. *pl.* 11.

Damna includes *miſo & cuſtagiis.*

G **If** one Defendant be found Guilty for Part, and found Not guilty for the Reſidue, and the other Defendant is found Not guilty for all, then the Entry is, that the Plaintiff ſhall be *in miſericordia* but once; which is ſpecially entered. *Cro. Car.* 178. *pl.* 1.

If one be found Guilty for Part, and Not Guilty for the Reſidue, and the other Not Guilty for all, there ſhall be but one Amercement.

H **Where** the Declaration is good, and there is a Fault in the Defendant's Plea; altho' the Plaintiff hath joined Iſſue upon it, which is found againſt him, yet the Plaintiff ſhall have Judgment upon his good Declaration. *Cro. Car.* 25. *pl.* 18.

Where the Declaration is good, and the Plea is naught; the Plaintiff ſhall have Judgment, tho' the Iſſue be found againſt him.

I **In** a Judgment upon the Statute of 1 & 2 *P. & M. cap.* 12. for impounding a Diſtreſs in ſeveral Pounds in ſeveral Hundreds: Tho' they are all found Guilty, yet it being but one Diſtreſs, there muſt be but one 5*l.* againſt them all, and but one trebling of the 40*s.* *Cro. Eliz.* 486. *pl.* 12.

How the Judgment muſt be upon the Statute for impounding of Diſtreſſes.

1 & 2 **Ph. & M.** cap. 12.

K **By** the Statute *For the Amendment of the Law*, 4 & 5 *Annæ*, it is enacted, That all the Statutes of *Jeofails* ſhall be extended to Judgments, which ſhall at any Time afterwards be entered upon Confeſſion, *Nil dicit*, or *Non ſum informatus*, in any Court of Record; and no ſuch Judgment ſhall be reverſed, nor any Judgment upon any Writ of Inquiry of Damages executed thereon, ſhall be ſtayed or reverſed for any Imperfection, Omiſſion, Defect, Matter or Thing, which would have been

The Statute of *Jeofails* aids all Errors, as well by *Nil dicit* as after Verdict, except Omiſſion of an Original Writ, Bill, or Warrant of Attorney.

4 & 5 **Ann.**

aided and cured by a Verdict by any of the Statutes of *Jeofails*, in Caſe a Verdict had been given in ſuch Action, ſo as there be an Original Writ or Bill, and Warrants of Attorney filed.

What Judgment ſhall be given on the bringing Money into Court. 4 & 5 **Ann.**

A **What** Judgment ſhall be given by the Court by the Statute of 4 & 5 *Annæ*, upon bringing of the Money into Court, ſee Title **Money in Court.**

A Writ of Error muſt be brought within twenty Years. 10 & 11 **W. cap.** 14.

B **The** Statute of 10 & 11 *W. cap.* 14. ſays, A Writ of Error to be brought upon a Judgment, ſhall be brought within Twenty Years, and not afterwards. *Vide* Title **Error.**

A new Trial cannot be moved for, after a Motion in Arreſt of Judgment.

C **There** cannot be a Motion for a new Trial after a Motion in Arreſt of Judgment; but there may be a Motion for a new Trial firſt, and if he fail in that, he may move in Arreſt of Judgment afterwards.

In an Appeal of Maihem 100*l.* againſt one, and 50*l.* againſt the other; the Plaintiff takes Judgment for the 100*l.* without releaſing the 50*l.* and good.

D **In** an Appeal of Maihem, Damages were found againſt one Defendant for 50 *l.* and againſt the other 100*l.* and the Plaintiff prayed Judgment againſt both for the 100*l.* and Coſts: And aſſigned for Error, becauſe the Plaintiff did not releaſe the Damages for the 50*l.* *Sed non allocatur:* For the Acceptance of the 100 *l.* Damages, is a Waver of the 50*l.* Damages; therefore the 50*l.* Damages need not to be releas'd. *Cro. Car.* 192. *pl.* 2, 193.

Where it ought to be *quod eat inde ſine die.*

E **Another** Error aſſigned was, that it was not *quod eat inde ſine die*; and for both theſe Errors reverſed, *Cro. Jac.* 439. *pl.* 12. 440. See *Cro. Car.* 406. *pl.* 5. 407.

Debt againſt Baron and Feme on a Bond of the Feme *dum ſola*: And Judgment againſt Baron *in Miſericordia*, and *Capiatur* againſt the Feme. Not good.

F **Debt** againſt Baron and Feme upon a Bond of the Feme *dum ſola*, and upon *non eſt factum* a Verdict was found; and Judgment againſt the Baron *in Miſericordia*, and a *Capiatur* againſt the Feme, when it ſhould be *Capiatur* againſt both. *Moore*, Caſe 982.

A *Retraxit* before Judgment releaſes all, but only extends to himſelf after Judgment.

G **A Retraxit** entered before Judgment for one of the Defendants releaſeth all the reſt; but after Judgment it ſhall extend only to him for whom it is entered. 1 *Roll. Rep.* 233. See Title **Retraxit.**

How the Judgment ſhall be upon an Information of Intruſion.

H **The** Judgment for the King upon an Information of Intruſion muſt be *Quod def. de intruſione, tranſgreſſione, & contemptu convincatur:* And thereupon a Commiſſion ſhall iſſue out to inquire of the meſne Profits. 3 *Leon.* Caſe 145 to 147.

How the Verdict and Judgment ſhould be in Detinue.

I **In** Detinue the Verdict was for the Plaintiff, Damages 7*l.* Coſts Six-pence; and if the Bond cannot be reſtored, then they aſſeſſed 20*l.* Damages beſides the 7*l.* and Judgment was entered that he ſhould recover the 7*l.* and Six-pence, and the Bond of 20*l.* and a *Diſtringas* was awarded to the Sheriff: And upon a Writ of Error this

Judgment was reverſed, becauſe it ſhould have been conditional, *viz.* the ſaid Bond; or if he cannot have the ſaid Bond, (which Words *And if it cannot be delivered,* were omitted) then the 20*l.* *Cro. Jac.* 681. *pl.* 19, 682.

A **How** the Judgment ſhall be in an Action of Waſte. *Cro. Car.* 452. *pl.* 24. 453.

How Judgment to be in an Action of Waſte.

B **Tho'** a Judgment be ſigned by a Judge, or by the Secondary, yet if it be never entered it is no Judgment: For until it is recorded it is no Judgment; and the Signing of it is but the Warrant of the Judge, or Secondary, for the Attorney to enter the Judgment.

It is the Entry upon the Roll makes the Judgment. The ſigning is only the Warrant for the Entry of it.

C **By** a Rule made by the Court of King's Bench in *Michaelmas* Term, 1705, it was ordered, That from and after the Firſt Day of the next *Hillary* Term, every Judgment in Debt, Caſe, Covenant, Treſpaſs, Trover, or any other Action, ſhall be entered fairly on the Roll, or an *Incipitur* thereof, before ſuch Judgment ſhall be ſigned by the Secondary, or any Judge of this Court, and the Names of the Plaintiff and Defendant, with the Attorney's Name, ſhall be entered in a Book to be kept by the Secondary of the Court for that Purpoſe, for which nothing will be paid but the ancient and accuſtomed Fee for entering ſuch Judgment.

How Judgment to be ſigned and entered.

The Names to be entered into a Book.

D **A Judgment** may be entered as to one Iſſue, and a *Nolle Proſequi* may be entered as to another Iſſue. This is where there are two or more Iſſues.

A Judgment to one Iſſue, and a *Nolle Proſequi* to the other.

E **When** at a Trial the Defendant is called (which is uſed to be done three Times diſtinctly by the Crier of the Court) to come forth, or elſe the Inqueſt ſhall be taken againſt him by Default, and he doth not appear, the Inqueſt ſhall, at the Prayer of the Plaintiff, be awarded by the Court to be taken againſt the Defendant by Default; that is, *viz.* That afterwards he ſhall not challenge any of the Jurors, (that Advantage, and nothing elſe, being loſt by him by ſuch Default) but he may give Evidence in the Caſe upon the Trial, in the ſame Manner as if he had appeared.

What the taking of the Inqueſt by Default is.

Not to challenge.

F **If** a Peremptory Rule be given for the Defendant to plead at a certain Day in a Civil Cauſe; if he do not plead accordingly, the Plaintiff may enter Judgment againſt him without moving of the Court: But if it be an Indictment, Information, *&c.* in the Crown-Office, or in a real Action, there Judgment cannot be entered without a Motion in Court for a Peremptory Rule.

The Plaintiff may enter his Judgment upon a Peremptory Rule for want of a Plea without Motion, except in caſe of an Indictment.

G **By** the Statute *Of Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3. No Lands are bound but from the very Day whereupon the Judgment is ſigned by the Judge, or Maſter of the Office, and the Day of Signing thereof

From what Day Lands are bound, by the Statute 29 **Car. 2. cap.** 3.

entered on the Margin of the Roll whereupon the Judgment is entered: And alſo the Day of the Month and Year of Inrolment of the Recognizance, which muſt be ſet down in the Margin of the Roll whereon the Recognizance is entered, which they take care to do upon the Signing every Judgment for Debt or Damages, and entering of every Recognizance. And if an *Elegit* be ſued out upon this Judgment of Recognizance, your *Elegit* muſt be as it was before this Statute, *viz.* That the Sheriff ſhould deliver a Moiety of all the Lands which the Defendant had, *Die Mercurii* (for the Purpoſe) *prox. poſt Quinden. Paſchæ quo die judicium prædict. redditum fuit*, as the Record of the Judgment is; for there can be no Judgment but in Term-time. And as to the Entry of the Judgment the Statute makes no Alteration: But when an Ejectment is brought upon this *Elegit*, executed and returned, and entered or filed, for the Recovery of Poſſeſſion of the Lands extended upon this *Elegit*; then at the Trial you muſt give in Evidence a Copy of the Judgment, whereupon the *Elegit* iſſued out, with the Day and Year when ſigned, and from thence, and not the Day mentioned in the Writ to be the Day when the Judgment was obtained, doth the Plaintiff's Title begin. So likewiſe in the Caſe of a Recognizance.

What the *Elegit* is to ſay in this Matter.

When the Plaintiff's Title begins.

By an Act made 4 *&* 5 *W. & M. cap.* 20. it is enacted, That the Clerk of the Eſſoins of the Common Pleas, Clerk of the Dockets of the King's Bench, and the Maſter of the Office of Pleas in the Exchequer, ſhall before the laſt Day of *Eaſter*-Term then next coming, cauſe to be put in an Alphabetical Docket by the Defendants Names, a Particular of all Judgments for Debt by Confeſſion, *Non ſum Informatus*, or *Nihil dicit*, entered in the reſpective Courts of the Term of St. *Hillary* preceding, which ſhall contain the Names of the Plaintiffs, Defendants, his or their Places of Abode, and Title, Trade or Profeſſion, if any ſuch be in the Record, and the Debt, Damages and Coſts recovered thereby, and in what County, City or Town the Actions were laid, and the Number-Roll of the Entry thereof. And that every Clerk of the Judgments, and every other Clerk of the Common Pleas and King's Bench, ſhall within ten Days before the Time aforeſaid, bring to the reſpective Clerk of the Dockets, Notes in Writing of all the Judgments by them, and every of them, entered of the ſaid Term of St. *Hillary*, upon Verdicts, Writs of Enquiry, Demurrer, and every other Judgment for Debt or Damages, in all Things as aforeſaid. Alſo the Clerks in the Exchequer ſhall do the like, to the End the ſame may be by the Clerk of the Eſſoins of the Common Pleas, Clerk of the Dockets of the King's Bench, and Maſter of the Office of Pleas in the Exchequer, entered in the reſpective Dockets before-mention'd in Manner and Form aforeſaid. And alſo, that the ſaid Officers and Clerks of the ſaid Courts ſhall before the laſt Day of *Michaelmas* Term next coming, and in every *Michaelmas* Term next after, make, or cauſe to be made, the like Docket as aforeſaid, containing all ſuch Judgments in the reſpective Courts of *Eaſter*

All Judgments for Debt by Confeſſion, muſt be docketted, *per* 4 & 5 W. & M. c. 20.

How to be entered.

and *Trinity* Terms then laſt paſt, in ſuch Manner as aforeſaid. And ſhall alſo the laſt Day of *Hillary* Term, 1693, and in every *Hillary* Term after, make, or cauſe to be made, the like Docket in Manner and Form aforeſaid, of all ſuch Judgments of the Term of St. *Michael* then laſt paſt, which reſpective Dockets ſhall be fairly put into, and kept in Books of Parchment, in the reſpective Offices before-named, to be viewed and ſearched by all Perſons at ſeaſonable Times, paying 4*d.* and no more, for one Term's Search for Judgments againſt one Perſon. The Forfeiture for Omiſſion or Neglect 100*l.* one Moiety to the Party grieved, and the other to the Proſecutor.

How much the Search to be.

The Forfeiture.

A **Alſo**, no Judgment not docketted ſhall affect a Purchaſor or Mortgagee, or have any Preference againſt Heirs, Executors, or Adminiſtrators, in their Adminiſtration of their Anceſtors, Teſtators, or Inteſtates Eſtates. This was a temporary Act, but made perpetual by an Act 7 *&* 8 *W.* 3. *cap.* 26.

No Purchaſor ſhall be affected by a Judgment not docketted.

B **That** the Clerk of the Dockets be paid for every Judgment upon Verdict, Writ of Inquiry, Demurrer, and every other Judgment by them entered, 4*d.* over and above the Fees due. This Act was made perpetual, 7 *&* 8 *W.* 3. *cap.* 26.

The Clerk's Fees.

7 & 8 **W.** cap. 26.

C **A Judgment** to bind the Goods, may be ſigned after the Defendant's Death, notwithſtanding the Statute of *Frauds and Perjuries*; becauſe that Statute was made only to help Purchaſors. *Freckelton* and *Kitſon*, *Paſch.* 2 *Jac.* *B. R.*

A Judgment entered after the Defendant's Death, will bind the Goods, not Lands.

D **Alſo** a *Fieri facias* was taken out, and executed after the Defendant's Death, and held good, *Cauſa qua ſupra*. *Hawden* and *Ripſley*. *Mich.* 2 *Jac.* 2. B.R.

A *Fi. fa.* executed after the Defendant's Death.

E **Alſo** in an Action on the Caſe brought againſt the Sheriff, for a Return of a *Nulla bona* upon a *Fieri facias*, although Judgment was ſigned after the *Teſte* of the Writ of *Fieri facias*, and both the Judgment and *Fieri Facias* were of *Hillary* Term, but the Judgment not ſigned until *March* afterwards, yet it was held good. And the Court declared, That they would not make any Uſe of the Day of ſigning of the Judgment, but only to relieve Purchaſors as the Statute intended. *Hill.* 2 *&* 3 *Jac.* 2. *Stamper* and *Kinſey*.

The Court takes no Notice of the Day of ſigning of the Judgment, but only to help Purchaſors.

F **If** the Defendant in an Ejectment will not appear and plead, there muſt be an Affidavit made of ſufficient ſerving of the Declaration, and then Counſel muſt move upon that Affidavit, to have Judgment againſt their own caſual Ejector, if the Tenant in Poſſeſſion doth not appear at the Day, to be appointed by the Court, which will be granted, if the Affidavit is ſufficient; and a Rule will be thereupon made, That unleſs the Tenant in Poſſeſſion will appear, and become Defendant within ſuch

Time as the Court thinks fit, that Judgment be entered againſt the caſual Ejector. *Note*, The Declaration in Ejectment, ought to be delivered before the Eſſoin-Day of the ſucceeding Term, and not on a Sunday; And (if in the King's Bench) it muſt be delivered to the Tenant himſelf, or to his Wife. And alſo you muſt move the next Term after your Declaration delivered for Judgment againſt the caſual Ejector, otherwiſe the Court will put you to deliver your Declaration *de novo*, and the firſt Delivery ſhall be void.

When the Declaration to be delivered.

When to move for Judgment againſt the caſual Ejector.

How to be where the Court is divided.

A **Upon** a Motion in Arreſt of Judgment, the Court was divided, two Judges againſt the other two. The Plaintiff muſt have his Judgment; becauſe the Court being divided, they can make no Rule to hinder the entring up of the Judgment upon the common Rule given for Judgment, upon bringing in of the *Poſtea*, or the Return of the Writ of Inquiry into the Court; unleſs they have made a Rule at the firſt to ſtay all Proceedings until the Court ſhall otherwiſe order.

How Judgment ſhall be at the Aſſizes upon a *Quare Impedit*.

B **How** a Judgment ſhall be at the Aſſizes upon a Verdict upon a *Quare Impedit*. *Lutw.* 905. *a.*

How in Replevin, where Part is found for the Plaintiff, and Part for the Defendant.

C **How** a Judgment in Replevin ſhall be, where Part is found for the Plaintiff, and Damages and Coſts; and Part for the Defendant, and Damages and Coſts. *Lutw.* 1194, 1197.

How to be when ſome of the Defendants plead Matter of Abatement in Bar, and Judgment by Default againſt others.

D **How** Judgment ſhall be when ſome of the Defendants plead Matter of Abatement in Bar, and Judgment by Default againſt the others. *Lutw.* 1343.

Judgment in *B. R.* upon an Iſſue and Demurrer out of the Petty-Bag.

E **Judgment** given in *B. R.* upon an Iſſue and Demurrer out of the Petty-bag. 1 *Lev.* 283.

Judgment for the Defendant reverſed, and a new Judgment given for the Plaintiff.

F **Where** a Judgment for the Defendant was reverſed, and a new Judgment given for the Plaintiff. 1 *Lev.* 310.

How to be againſt Baron and Feme Executors.

G **How** the Judgment ſhall be againſt Huſband and Wife, Executors, becauſe ſhe can have no Goods. 2 *Lev.* 161.

A voidable Judgment may be pleaded till revers'd.

H **A voidable** Judgment may be pleaded till revers'd; becauſe until reverſed it is a good Judgment. 3 *Lev.* 203.

The Court may amend their Judgments the ſame Term.

I **The** Court may amend their Judgments of the ſame Term, but not of another Term; becauſe the Term is but one Day in Law. 3 *Lev.* 430.

How Judgments ſhall be againſt Infants.

K **How** Judgments ſhall be againſt Infants. See Title **Infants**.

A **The** Judgment in a Formedon was, *quod petens recuperet ſeiſinam de uno meſſuagio & duabus acris terræ & paſtura*, not ſaying how much the Land was, and how much the Paſture; and held to be ill for this Incertainty, and was reverſed; tho' moved that it might be affirmed for the Meſſuage; which the Court ſaid, the Common Pleas might have done by giving Judgment for the Meſſuage only: But here the Judgment being entire, cannot be affirmed for Part and reverſed for Part, but muſt be reverſed for the Whole. *Cro. Car.* 471. *pl.* 3.

A Judgment in a Formedon reverſed for Incertainty, *De duabus acris terra & paſtura*, and ſays not how much Land and how much Paſture.

An intire Judgment cannot be affirmed for Part, and reverſed for Part.

B **Alſo** it is *Miſericordia* againſt all three, whereas only two appeared; and againſt him who appeared upon the Summons, no *Miſericodia* ought to be; and for theſe Errors reverſed. *Cro. Car.* 564. *pl.* 9.

And *Miſericordia* againſt them all, where it ſhould not have been againſt any of them.

C **Juſtices** of *Niſi Prius* may give Judgment, as well where a Man is acquitted of Felony and Treaſon, as where he is thereof attainted, and may award Execution to be made by Force of the ſame Judgments.

Juſtices of *Niſi Prius* may give Judgment upon a Man attainted of Felony or Treaſon. 11 **H.** 6. **cap.** 1.

D **Judgment** for a Fine may be given in the Defendant's Abſence, but not for any corporal Puniſhment. *Salk.* 56. 400. *Comb.* 448.

Judgment in Defendant's Abſence.

E **Judgment** may be given after the Plaintiff's Death, if it be within two Terms after the Verdict. *Salk.* 401.

Judgment after the Plaintiff's Death.

F **There** muſt be four Days excluſive between the Day in Bank and the ſigning of Judgment. *Ibid.* 399.

Signing Judgment.

G **In** what Caſes Judgment may be entered on the peremptory Rule without Motion. *Ibid.*

Judgment without Motion.

H **Judgment** on Demurrer to a Plea muſt be entred with *Et quia videtur curia quod placit' præd' &c. Salk.* 402.

On a Demurrer.

I **If** the Plaintiff in a *Monſtrans de droit* fails in his Title, no Judgment need be given for the King. *Ibid.* 448.

Monſtrans de droit.

K **See** the Forms of entring Judgment on *non Proſſ. &c. Ibid.* 455, 456.

Non Proſſ.

L **Judgment** ought to be compleat and formal, and a Diſmiſſion is no Judgment. *Ibid.* 511, 512.

Judgments to be formal.

M **Warrant** to confeſs Judgment by a Feme, who afterwards marries, is thereby revok'd. *Ibid.* 399.

Warrant of Attorney revoked in Law.

Judgment by a Priſoner.

A **A Warrant** to confeſs Judgment may be given in Cuſtody, and how. *Salk.* 402.

Feme Covert.

B **A Judgment** confeſs'd by a Feme Covert refuſed to be ſet aſide on Motion. *Ibid.* 400.

Judgment on Terms.

C **Where** a Judgment is confeſs'd on Terms, the Court will take Notice of them; *aliter*, if the Agreement is ſubſequent. *Ibid.* 40.

Judgment reverſed.

D **Judgment** for a ſcandalous Libel, altered the ſame Term, and the Puniſhment encreaſed. *Ibid.* 401.

Judgment againſt the Adminiſtrator.

E **Upon** a Writ of Inquiry after an interlocutory Judgment, here the final Judgment muſt be againſt the Adminiſtrator. *Ibid.* 42.

Debt upon a Judgment.

F **Bringing** Debt upon a Judgment, is no Waver of the *Lien* created by that Judgment. *Ibid.* 80.

Debt in an inferior Court.

G **And** Debt will not lie in an inferior Court on a Judgment in *B. R.* (*Q.*) *Salk.* 439. *Comberb.* 220.

Payment of Coſts.

H **On** Payment of Coſts, Judgment will be ſet aſide tho' regularly entered, if the Plaintiff has not loſt a Trial. *Salk.* 402.

Irregularity.

I **There** can be no Reference for Irregularity after a Writ of Error. *Ibid.*

Judgment in Error.

K **What** Judgment ſhall be given on a Writ of Error. *Vide Salk.* 401.

Reverſal of Part.

L **A Judgment** can't be reverſed in Part and affirmed in Part, unleſs Part is by Common Law and Part by Statute. *Salk.* 24. *Carthew* 235.

Judgment reverſed in the Exchequer.

M **If** Judgment for the Defendant on a ſpecial Verdict be reverſed in the Exchequer Chamber, that Court ſhall give the new Judgment; *aliter*, if on a Demurrer. *Salk.* 403.

Judgment in Parliament.

N **If** a Judgment of *B. R.* be reverſed in Parliament, the new Judgment muſt be entred in Parliament. *Ibid.*

When Lands bound.

O **Lands** are bound as to Purchaſors from the ſigning the Judgment. 3 *Salk.* 159.

Judgment pleaded.

P **Where** a Judgment in an inferior Court was pleaded without any Plaint levied, and held good. 3 *Salk.* 112.

Of Judgments by *Nil dicit*, &c.

Q **Of** Judgments by *Nil dicit* and by Default, and by Departure in Deſpight of the Court. See 3 *Salk.* 213.

Judgment by Fraud.

R **A Judgment** confeſſed by Fraud, an Action lies in ſuch Caſe. *Carthew* 3.

Adminiſtratrix.

S **Judgments** pleaded by an Adminiſtratrix. *Ibid.* 430.

Judgment in *B. R.*

A **Judgment** is never given in *B. R.* upon a Conviction in another Court. *Carth.* 6.

Scire Facias againſt whom.

B **Where** there is a joint Judgment againſt two, and one dies before Execution, the *Scire Fac.* muſt be brought againſt the Survivor, and againſt the Heir and Tertenants of the dead Man. *Carth.* 107.

Judgment reverſed.

C **A Judgment** was reverſed for miſtaking the Name of one of the Officers who executed it. *Carth.* 443.

Againſt an Heir.

D **Judgment** againſt an Heir, where General and where Special. *Comber.* 162.

Judgment reverſed in Parliament.

E **Where** Judgment for the Defendant in Ejectment in *B. R.* is revers'd in Parliament, there ought to be a new Judgment, *Quod quer' recuperet terminum. Comber.* 314.

Judgment voidable.

F **Judgment** in the Common Law Court of *Briſtol*, where the Court of Conſcience there is entitled to the Action, is only voidable, though the Words of the Statute (being a private Statute) are, The Judgment ſhall be void, and the Defendant have Coſts and Execution on ſuch Judgment, was adjudg'd good. *Comber.* 235, 236. *Salk.* 674.

Quo Warranto.

G **How** Judgments ſhall be given in a *Quo Warranto. Comber.* 448, 19.

Judgment on Indictments.

H **Where** Judgment on vitious Indictments to be ſet aſide. *Ibid.* 13.

In Treaſon.

I **Judgment** in Treaſon deny'd to be arreſted, tho' ſeven Objections thereto. *Ibid.* 5, 6.

The like.

K **See** Judgment in Treaſon revers'd in the Caſe of the King and *Walcot. Ibid.* 370.

L **See** alſo 149, 161, 303, 310, 365.

Forgery.

M **A Rule** deny'd for making up a Record with an Arreſt of Judgment on a Conviction of Forgery. *Mod. Caſes in Law and Equity.* 45.

Ejectment.

N **In** Ejectment Judgment cannot be enter'd on a Confeſſion of the Caſual Ejector. *Ibid.* 109.

Teſtatum Capias.

O **A** *Teſtatum Capias* founded on a *Capias* which iſſued before the Judgment ſigned, is ill. *Ibid.* 189, 190.

When to be ſigned.

P **A Judgment** given the laſt Paper-Day cannot be ſign'd 'till the *Quarto die poſt*, which is out of Term. *Ibid.*

Sci. Fac. againſt Bail.

Q **A** *Scire Facias* againſt the Bail jointly, but a ſeveral Judgment againſt each held good. *Ibid.* 199.

Judgment againſt a Priſoner.

R **Tho'** a Judgment be regularly obtain'd againſt a Priſoner he muſt yet be charg'd in Cuſtody within two Terms after; and if he be charg'd afterwards the Court will diſcharge him with Coſts. *Ibid.* 227.

Judgment ſigned too ſoon.

S **A Judgment** ſet aſide becauſe ſigned four Days, *i. e.* before the *Quarto die poſt. Ibid.* 237.

Judgment.

Part of Monies paid.

A Motion was made to ſtay Proceedings on a Judgment, for that Part of the Money was paid, but denied, unleſs the Defendant brought all that was due, &c. into Court. *Mod Caſes in Law and Equity*, 236. A

A Judgment given after the Judge came to Town.

A Judgment was given by a Judge of Aſſize after he came to Town, but this was by Conſent. *Ibid.* 246. B

When a Judgment not to be arreſted.

A Judgment by Default is not to be impeach'd where the Defendant made a Defence on the Writ of Inquiry. *Ibid.* 289. C

Againſt a Director of the *South-Sea Company.*

See a Judgment againſt a Director of the *South-Sea Company* ſet aſide, &c. by Stat. 7 *Geo.* 1. *cap.* 1, 5. *Ibid.* 291. D

Exceſſive Damages.

A Motion was made in Arreſt of Judgment becauſe the Jury gave exceſſive Damages, but deny'd. *Ibid.* 296. E

Relation.

A Judgment when ſign'd, ſhall relate to the firſt Day of the Term precedent. *Ibid.* (*Vide* 189, 190.) 310. F

Rejoinder.

Where the Rejoinder did not anſwer the Replication, the Plaintiff had Judgment. *Ibid* 343. G

Ejectment.

In Ejectment for Non-payment of Rent the Plaintiff had Judgment, but Proceeding ſtayed, &c. *Ibid.* 345. H

Principal and Bail.

Bankruptcy in the Principal ſhall not avoid a Judgment regularly had againſt the Bail. *Ibid.* 348. I

Condition.

Where a Condition, &c. is in the Disjunctive, and one Part thereof falſified, the Plaintiff muſt have Judgment. *Ibid.* 349. K

Againſt the Marſhal.

Where Judgment is had againſt the Marſhal, the Profits of the Priſon ſhall be ſequeſtred, &c. *Ibid.* 350. L

Surpluſage.

A Judgment ſhall not be vitiated for any Error in a Word of Surpluſage. *Ibid.* 377. M

Judgment ſet aſide.

See Judgment ſet aſide on Payment of Coſts, giving a new Judgment, and pleading to Iſſue immediately. *Ibid.* 289. N

Of Judgments againſt Priſoners. Vide **Declaration,** 563. a.

Juriſdiction.

See { **Courts.** **Declaration.** **Abatement.** **Pleas.**

A **THE Courts at Weſtminſter have Juriſdiction all over England: All the other Courts are confined to their particular Juriſdictions; which if they exceed, then whatever they do is erroneous.**

Juriſdiction of Courts.

B **A** County-Palatine Court need not certify their Juriſdiction. 1 *Saund.* 74.

A County-Palatine need not certify their Juriſdiction.

C **Inferior** Courts ought to certify their Juriſdiction. *Ibid.*

But inferior Courts muſt.

D **Of** the Juriſdiction of what other Courts the Courts at *Weſtminſter* will take Notice. *Ibid.*

The Courts at *Weſtminſter* will take Notice of the Juriſdiction of other Courts.

E **Nothing** ſhall be intended to be out of the Juriſdiction of a ſuperior Court, but only that which ſpecially appears: But on the contrary, nothing ſhall be intended to be within the Juriſdiction of an inferior Court, but only that which is expreſly alledged. *Ibid.*

Nothing intended to be out of the Juriſdiction of a ſuperior Court, but what appears to be ſo: Nor within that of an inferior Court unleſs alledged.

F **The** eſſential Difference betwixt free Chapels and other Churches and Chapels is, that all free Chapels are free from the Juriſdiction of the Ordinary: *Hill.* 23 *Car. B. R.* So that the Ordinary is not to intermeddle with them in any Thing that doth concern them, or to viſit them; whereas all other Churches and Chapels are within the Juriſdiction of ſome Ordinary, and may be viſited; but I ſuppoſe the King may grant a ſpecial Commiſſion to Viſitors to viſit and reform as they ſhall ſee Occaſion.

Difference between free Chapels and others.

G **The** Juriſdiction of a Court where a Cauſe is depending, cannot be extended farther in relation to that Cauſe by the Conſent of the Plaintiff and Defendant, than of Right it ought to extend: *Paſch.*

The Juriſdiction of a Court cannot be extended farther than of Right.

24 *Car. B. R.*

24 *Car. B. R.* For this would be for the Parties to erect (as it were) a Court which was not before, for the Trial of their Cauſe; and by this Means the Juriſdiction of every Court would grow to be unlimited, which would be inconvenient.

B. R. has no Conuſance of the Proceedings in Parliament.

This Court hath no Conuſance of the Proceedings in Parliament: *Paſch.* 24 *Car. B. R.* So held in *John Lilburn*'s Caſe: Becauſe the Parliament is the Supreme Court, and ſubject to no other Court. A

Extent of the Juriſdiction of *B. R.*

This Court hath a general Juriſdiction to reform the Abuſes of all Perſons in their Behaviour throughout all *England*; and the Abuſes and Miſcarriages of all Courts of Juſtice throughout all *England:* 9 *Feb. Hill.* 1649. *B. S.* 3 *Julii* 1650. *B. S.* For the good Behaviour of all Perſons doth much conduce to the Peace of the Nation. B

Where Hereſy and Schiſm may be determin'd at Common Law.

Although Hereſy or Schiſm are not properly triable at the Common Law, if a Court of Common Law have Conuſance of the principal Cauſe whereupon theſe depend, they may be there determined, and the Judges will conſult with, and hear Divines thereupon. 5 *Rep.* 58. C

Pleas to the Juriſdiction muſt be before Imparlance.

Pleas to the Juriſdiction of a Court ought to be at the firſt, and not after Imparlance, and he that pleads ought alſo to give Juriſdiction to another Court. See *Co. Lit.* 303. 2 *H.* 7. 16, 17. 22 *H.* 6. 7. D

Plea in Diſability affirms the Juriſdiction.

He that pleads in Diſability of the Perſon of the Plaintiff or Defendant affirms the Juriſdiction of the Court, and therefore cannot plead againſt it. 35 *H.* 6. 12.

If the Court of Chancery grant a *Habeas Corpus* to a Priſoner in Cuſtody of the Marſhal, this Court cannot reſtrain him.

If the Court of Chancery do grant a *Habeas Corpus* to a Priſoner that is in the Cuſtody of the Marſhal of this Court; this Court hath no Power to reſtrain the Priſoner ſo long as the *Habeas Corpus* is in Force: 3 *Julii*, 1650. *Trin. B. S.* In the Caſe of Sir *Arthur Smithies* and *Workman:* For if it ſhould be ſo, this would be for the Authority of one Court to interfere with another. E

B. R. has Juriſdiction over all other Courts in Mandatory Writs.

This Court hath Juriſdiction over all the Courts of *England* in all Mandatory Writs: 10 *Feb.* 1650. *B. S.* Which are ſuch Writs which proceed out of this Court, as the Superintendent Court, and Supreme Judicature. F

May grant a *Mandamus* to a College to admit a Fellow.

Alſo for the Admiſſion of a Mayor, *&c.*

This Court hath Power to grant a *Mandamus* to a College, to command them to admit a Fellow there: Dr. *Patrick*'s Caſe. *Trin.* 18 *Car.* 2. *Reg.* in *B. R.* And alſo for the admitting a Mayor, Bailiff, Alderman, Pariſh-Clerk, *&c.* or other Perſon who is elected into an Office, and refuſed to be admitted; or turned out of his Office when admitted: But G

Note, A *Mandamus* will not lie to command any Perſon or Corporation to elect any Perſon into an Office, but only to admit them when elected, *vel cauſam ſignificare.*

But cannot command any Perſon or Corporation to elect.

A **See** in Title **Declaration**, how to declare upon a *Recordare* removed out of an Inferior Court, where the Damages are under 40 *s.*

How to declare upon a *Recordare* out of a County-Court.

B **Where** Damages are laid under 40 *s.* in an Hundred-Court, Coſts may make it amount to more: But where it is laid above, in ſuch Caſe it is all *Coram non Judice.* 2 Mod. 102.

Tho' Damages cannot be more in an Hundred-Court, yet they may be more with Coſts.

C **For** Caſes concerning exempt Juriſdictions. *Vide* 3 *Salk.* 79, 80.

D **What** ſhall be intended out of the Juriſdiction, and what not. *Ibid.* 216.

Intendment.

E **When** *Infra Juriſdictionem* muſt be alledged in Pleading. *Ibid.*

Infra Juriſdictionem.

F **All** Juriſdiction is deriv'd from the Crown. *Ibid.* 510.

From whom derived.

G **In** Inferior Courts every Thing that makes the Giſt of the Action muſt be laid within the Juriſdiction. *Ibid.* 404.

Infra. Jur. &c.

H *Aliter* if only Matter of Aggravation. *Ibid.*

I **A Bill** may be filed in Chancery to foreclose a Mortgage on Lands out of its Juriſdiction if the Perſon be within it. *Ibid.*

Equity.

K **See** a Diverſity where two Courts have Juriſdiction of the ſame Thing and where not. *Ibid.* 195.

Concurrent Juriſdiction.

L **And** ſee the Juriſdiction of Juſtices and the Seſſions touching Apprentices. *Ibid.* 67.

Apprentices.

M **A Plea** to the Juriſdiction muſt come in Time. *Carth.* 11.

Pleading.

N **Such** Plea need not be ſworn as a Foreign Plea muſt. *Ibid.* 402.

Not to be ſworn.

O **A Cauſe** is not within the Juriſdiction of a Superior Court when it comes there *per Saltum,* and before its Time, by Writ of Error or Appeal. *Skinner* 522, 523.

Writ of Error and Appeal.

P **All** inferior Juriſdictions ought to ſhew (in their Proceedings and Returns) that they have proceeded according to the Power they have by Law, or they ſhall be compell'd to it. *Mod. Caſes in Law and Equity,* 4.

Inferior Juriſdictions to ſhew they have purſued their Powers.

Q **Yet** an *Inſimul Computaſſent infra juriſdictionem* was held good, tho' the Cauſe thereof was not within the Juriſdiction. *Ibid.* 77.

Inſimul Computaſſent.

R **A Judgment** of an inferior Juriſdiction *Ideo conſideratum quod convictus eſt* is good, tho' not ſaid *Quod forisfaciat.* *Ibid.* 175.

Judgments.

Prohibition.

A Prohibiton was granted to the Grand Seſſions in *Wales*, for that the Defendant living in *London* was ſerv'd with Proceſs of that Court and not appearing thereon, his Lands there were ſequeſtred. *Mod. Caſes in Law and Equity*, 374. A

Jury and Juror.

See **Venire Facias and Venue.**

The Court will order a Secondary to return a Jury, if they ſee Cauſe.

BY *Glyn*, Chief Juſtice. This Court will order the Secondary to return a Jury to try a Cauſe at the Aſſizes, if they ſee Reaſon for it, without both Parties conſent, or elſe this were to thwart the ordinary Courſe of Proceedings, and obſtruct Juſtice. B

A Jury of Merchants order'd to be return'd.

The Court was moved, that a Jury of Merchants might be returned to try an Iſſue between two Merchants, touching Merchants Affairs, and it was granted: *Hill.* 21 *Car. B. R.* Becauſe it was conceived they might have better Knowledge of the Matters in Difference which were to be tried, than others could, who were not of that Profeſſion. C

They may take Notice of a Record, but cannot try it.

A Jury may take Notice of a Matter of Record, but they cannot try it: *Mich.* 22 *Car. B. R.* For a Record muſt be tried by it ſelf, and judged of by the Court. D

Juror dwells in one Pariſh, and holds Lands in another: He may be return'd upon a Jury as of the Pariſh where the Lands lie.

If a Juror do inhabit in a Houſe that is in the Pariſh of *Dale*, and do occupy Lands that do lie in the Pariſh of *Sale* next adjoining, and he is returned upon a Jury as of the Pariſh of *Sale*, this is well enough, although he do not dwell in *Sale*: *Paſch.* 23 *Car. B. R.* For he ſhall be ſaid to be as well of the Pariſh where the Lands lie which he occupieth, as of the Pariſh where he inhabits; for he is a Pariſhioner in *Sale* though an Inhabitant in *Dale*, and he may as well be ſaid of *Sale* as of *Dale*. E

A **No** Writ of *Alias*, or *Plur' diſtringas Jur' cum tales*, for the trying of Iſſues at the Bar, ſhall be ſued out before the precedent Writ of *Diſtringas Jur'* with the Panel of the Names of the Jury to it annexed ſhall be delivered to the Secondary of this Court, to the Intent that the Iſſues forfeited by the Jury, for their not appearing upon the ſaid precedent Writ, may be duly eſtreated. *Per Cur. Hill.* 14 *&* 15 *Car.* 2.

No *Alias* or *Pluries diſtringas* to be ſued out before the *Diſtringas Jur'* be delivered to the Secondary.

B **In** Caſes where it is conceived an indifferent Jury will not be returned between the Parties by the Sheriff of the County where the *Venue* lies, the Court upon Motion will order the Sheriff to attend the Secondary of the Office with his Book of the Freeholders of the County where he is Sheriff, and the Secondary in the Preſence of the Attornies on both Sides to ſtrike a Jury: *Trin.* 23 *Car. B. R.* But there muſt be probable Matter ſhewed to the Court, why an indifferent Jury may not be had, elſe the Court will make no ſuch Rule.

In what Caſes the Court will order the Secondary to ſtrike a Jury.

C **Upon** a Motion and an Affidavit made in Court, that the Cauſe to be tried at the Bar, is a Cauſe of very great Conſequence, the Court will, if they ſee Cauſe, make a Rule for the Secondary to name forty-eight Freeholders, and each Party to ſtrike out twelve by one at a time, the Plaintiff or his Attorney to begin firſt, and the remaining twenty-four ſhall be the Jury to be returned for the Trial of the Cauſe. *Trin.* 23 *Car. B. R.*

Upon Affidavit in Court, that the Cauſe is of great Conſequence, the Court will make a Rule for the Secondary to name Twenty-four Freeholders.

D **A Tenant** that is within the Diſtreſs of a Lord of a Manor or Leet, ought not to ſerve upon a Jury in a Cauſe that concerns the Lord: *Mich.* 23 *Car. B. R.* For it ſhall be preſumed he may not be indifferent, in regard of fearing to diſpleaſe his Lord, under whoſe Diſtreſs he lies.

Tenant within Diſtreſs of a Lord may not ſerve on a Jury where the Lord is concerned.

E **Where** Jurors come out of two Counties, one of one County muſt be ſworn, and then another of the other County; otherwiſe it is Error. *Hob.* 330.

When Jurors come out of two Counties, how they muſt be ſworn.

F **It** is the Cuſtom of *London*; in an Action of Waſte, to return the Jurors out of the four next Wards to the Place waſted. 2 *Saund.* 252. *&c.*

How a Jury in *London* to be in an Action of Waſte.

G **After** a Juror is ſworn he may not go from the Bar until the Evidence is given, and the Directions of the Court for any Cauſe whatſoever, without Leave of the Court; and altho' he have Leave he muſt have a Keeper with him; ſo cautious is the Court to prevent all Suſpicion of ſiniſter Proceedings in the Trial of Cauſes. *Paſch.* 24 *Car. B. R.*

A Juror ſworn may not go from the Bar without Leave.

H **Where** a Trial is to be for a Thing that concerns the Under-Sheriff, or the High-Sheriff, the *Venire* muſt be awarded to the Coroners to return the Jury: *Trin.* 24 *Car. B. R.* For here ſhall be no Favour

If the Sheriff be concerned, the Coroners return the Jury.

ſuppoſed;

ſuppoſed; but if the Trial concern the High-Sheriff, and the Jury ſhould be returned by his Under-Sheriff; or the Trial concern the Under-Sheriff, and the Jury be returned by his High-Sheriff, there muſt be preſumed in theſe Caſes Favour.

They may not take any Writing away with them that has not been proved.

A **The** Jury ought not to have any Writing with them when they go from the Bar, which hath not been proved, although ſuch Writing hath been given in Evidence unto them: For though it be given in Evidence, yet if it be not proved, nothing can be directly concluded from it; and therefore the Jury is not to have it to guide their Conſciences by. *Mich.* 24 *Car. B. R.*

In what Caſes a Jury are finable, and in what not.

B **Where** it appears to the Court that the Jury have been unlawfully dealt withal to give their Verdict, they are finable: *Vaugh.* 153. But they are not finable for giving a Verdict contrary to their Evidence; but if it be in a civil Cauſe, an Attaint will lie againſt them: *Ibid.* 144, to 149. Neither are they finable where an Attaint doth not lie. *Ibid.* 145.

They may find Matter of Record of their own Knowledge.

C **The** Jury may find Matter of Record, if they do it of their own Knowledge. For Example, If the Jury do know that *John* at *Stile* levied a Fine of his Lands in *Dale* to *J. N.* they may find that ſuch a Fine was levied: *Paſch.* 1650. *B. S.* 10 *Maii.* For a Man's own Knowledge is more certain than any Evidence can be given.

Three Grand Juries return'd every Term to ſerve in *B. R.*

D **There** are three Grand Juries returned every Term to ſerve in this Court, every Jury conſiſting of ſixteen, ſeventeen, eighteen, nineteen or twenty Jurors, or more, to enquire of Offences criminal committed in the ſeveral Parts of the County of *Middleſex* through the whole County. The Reaſon why there are three Juries is, becauſe there are three Hundreds in *Middleſex*, and for every ſeveral Hundred there is a particular Jury returned to ſerve for that Hundred only.

A Man very aged, but of able Body, not excuſed from ſerving on a Grand Jury.

E **Though** a Man be very aged, yet if he be of an able Body, and not infirm, he is not to be excuſed from ſerving upon the Grand Jury.

A Man of ſeventy-two Years old not excus'd, and why.

F **One** *Butler*, a Man of ſeventy-two Years of Age, was denied by *Rolle*, Chief Juſtice, to be excuſed to ſerve, becauſe he was of an able Body, and had his Senſes and Underſtanding perfect. *Hill.* 1651. *B. S.*

Nor a Man who has no Freehold in the County; nor a Conſtable, &c.

G **One** that hath no Freehold in the County, or is a Conſtable, or a Surveyor of the High-ways, is not thereby to be excuſed from ſerving upon the Grand Jury: For ſmall Excuſes muſt not ſerve to protect Men from ſerving the Publick, which is to be preferred above any private Intereſt. *Paſch.* 1651. *B. S.* by *Rolle*, Chief Juſtice.

A **The** Jurors that appear at a Trial ſhall not have their Charges allowed them, if the Cauſe be not tried for want of Jurors: *Paſch.* 1652. *B. S.* For their Appearance is of no Benefit to any Body; and therefore it is no Reaſon they ſhould receive any Recompence.

Jurors that appear, not to have their Charges, if the Cauſe be not tried for want of Jurors.

B **When** a Juror is withdrawn he is ſtruck out of the Panel by the Secondary.

Juror withdrawn is ſtruck out by the Secondary.

C **Upon** a General Iſſue the Jury may find a Record, but not upon a *Nul tiel Record* pleaded, 1651. *B. S.* For there the Record muſt be tried by itſelf.

On a General Iſſue the Jury may find a Record, but not upon *Nul tiel Record* pleaded.

D **If** but eleven of the Jury be ſworn, if the twelfth Man do ſtand by, and hear all the Evidence that was given to his Fellows, he may be ſworn afterwards and paſs upon the Trial: By *Rolle*, Chief Juſtice, 1654. *Paſch. B. S.* For the Jurors are ſworn to try the Iſſue.

If but eleven be ſworn, and the twelfth ſtands by and hears the Evidence, he may be ſworn afterwards and paſs upon the Trial.

E **The** Jury may take Depoſitions taken in Chancery, and exemplified there, given in Evidence to them, from the Bar with them; but if they be not exemplify'd they may only look upon them in Court, but not take them with them out of the Court, 1654. *B. S.* For to ſee them is no more than to hear them read, and they are not ſo authentical if not exemplify'd.

They may take from the Bar Depoſitions taken in Chancery, if exemplify'd, otherwiſe not.

F **In** all Caſes where an Alien is Plaintiff or Defendant, the Trial, whether Civil or Criminal, ought to be *Per medietatem Linguæ*, and a Suggeſtion to be made upon the Record to that Purpoſe; and when the Jurors appear, they ſwear one *Engliſh* and one Foreigner, and ſo on 'till they have a full Jury.

Where the Jury ought to be *per medietatem Linguæ*.

G **It** is not neceſſary in a *medietate Linguæ* that the Foreigners ſhould be all of the ſame Country that the Foreigner is of, who is to have the Trial; ſo that they be Foreigners, and every Man of a ſeveral Nation, it is ſufficient.

Not neceſſary that the Foreigners be all of the ſame Country.

H **By** an Act made 4 & 5 *W. & M.* it is enacted, That all Jurors (other than Strangers upon Trials, *per medietatem Linguæ*) to be return'd upon the Trial of Iſſues in any of the Courts of *Weſtminſter*, or *Niſi Prius*, Oyer or Terminer, Gaol-Delivery, or General Quarter Seſſions, ſhall have in their own Names, or in Truſt for them, in the ſame County, 10 *l. per Annum* of Freehold, Copyhold, or antient Demeſne Lands and Tenements, or in Rents, or in all or any of them, in Fee-ſimple, Fee-tail, or for the Life of themſelves, or of ſome other Perſon. Alſo, That in every County in *Wales*, every ſuch Juror ſhall have 6 *l. per Annum* in Manner aforeſaid.

4 & 5 W. & M. cap. 24. Sect. 15.

How much Eſtate Jurors in *England* and *Wales* to have *per Ann.*

Good Cauſe of challenging if they have not.

A **Alſo**, That if any Perſon of a leſſer Eſtate or Value than is in that Statute directed, be returned upon any Jury, it ſhall be a good Challenge, and the Party returned ſhall be diſcharged upon ſuch Challenge, or upon his Oath of the Truth of the Matter.

How Iſſues ſhall be ſpared.

B **No** Iſſues of Jurymen making Default ſhall be ſaved, but by ſpecial Order of the Court, or Judge, before whom the Iſſue is to be tried, for ſome reaſonable Cauſe proved upon Oath before the ſame Court or Judge; and that all ſuch Iſſues ſhall be duly eſtreated into the *Exchequer*.

How the *Venire* is to be.

4 & 5 Annæ.

C **That** the *Venire facias* hereafter ſhall be *duodecim liberos & legales homines de vicineto de* A. (But by the 4 & 5 *Annæ*, it is to be *De corpore com.*) *quorum quilibet habeat decem liberat' terræ tenementorum vel reddit. per annum ad minus*. And the Writ into *Wales* to be *ſex liberat'*.

Who ſhall be returned thereupon.

D **That** upon every ſuch Writ, the Sheriff, Coroner, or other Miniſter, unto whom the making of the Panels belong, ſhall not return any Perſon, unleſs he have 10 *l. per Ann.* in *England*, and 6 *l. per Ann.* in *Wales* at leaſt, as aforeſaid, in the County where the Iſſue is to be tried, upon Pain of forfeiting to their Majeſties 5 *l.* for every Perſon returned contrary hereunto.

To be duly ſummoned ſix Days before.

The Forfeiture.

E **No** Sheriff, Bailiff of Franchiſe, or their Miniſters, ſhall return any Perſon, unleſs he hath been duly ſummoned ſix Days at the leaſt before the Day of the Appearance; nor ſhall take Money or other Reward to excuſe the Appearance of any Juror, upon Pain of forfeiting 10 *l.* to their Majeſties for every ſuch Offence.

All Cities, &c. excepted.

F **Note**, All Cities, Boroughs, and Towns Corporate, are excepted out of this Act.

As to *Tales* Men.

G **That** every *Tales* Man to be returned in *England* ſhall have 5 *l. per Annum*, and every *Tales* Man in *Wales* 3 *l. per Annum*.

To take no Fee upon Acccount of any Men returned.

Penalty 10 *l.*

H **That** no Fee or Reward ſhall be taken by any Sheriff, Clerk of Aſſize, or any other Officer or Perſon whatſoever, for the returning of any *Tales*, or upon Account of any *Tales* returned, upon Pain of forfeiting 10 *l.* the one Moiety to the Proſecutor, the other to their Majeſties.

Who ſhall not be return'd upon Aſſizes or Juries.

18 E. 1. cap. 38.

I **By** the Statute of *Weſtm.* 2. *cap.* 38. No Perſon above 70 Years of Age, or ſick and infirm, or not dwelling in the County, ſhall be return'd on Juries. See 2 *Inſt.* 446, 447.

How a Writ of *Non ponend' in Aſſis* to be granted.

K **No** Writ of *Non ponend' in Aſſiſis* ſhall be hereafter granted, unleſs upon Oath that the Suggeſtions upon which the Writ is granted are true.

A **Note,** So much of this Act as relates to Jurors, to be in Force for three Years, from the firſt of *May* 1693, and from thence to the End of the next Seſſion of Parliament. And by an Act made 3 & 4 *Annæ*, *cap.* 18. it is continued for ſeven Years, and to the End of the next Seſſion of Parliament, with ſome Additions as to the County of *York*.

The Continuance of this Act.
3 & 4 Ann. cap. 18.

B **See** the Act made 7 & 8 *W. cap.* 32. entituled, *An Act for the Eaſe of Jurors, and better regulating of Juries*, which was made perpetual by an Act made 1 *Annæ*, *cap.* 13.

Stat. 7 & 8 W. c. 32.
For the Eaſe and better regulating of Juries.

C **By** the Statute of 8 & 9 *W.* 3. *cap.* 9. it is enacted, That all Juſtices of the Peace are required and commanded at the Seſſions of the Peace that ſhall be holden next before *Michaelmas*, yearly, and every Year, to iſſue forth Precepts to the reſpective Conſtables within their reſpective Counties or Diviſions, thereby requiring them to make ſuch Return of Perſons to ſerve upon Juries, as by the Act made the firſt Seſſion of the Parliament of 7 & 8 *W.* 3. *cap.* 32. is directed. But now by a Statute made 4 & 5 *Annæ*, *For the Amendment of the Law*, it is enacted, That every *Venire Facias* to try any Civil Cauſe in any of Her Majeſty's Courts at *Weſtminſter*, ſhall be awarded of the Body of the proper County where ſuch Iſſue is triable.

The Act concerning Juries, 8 & 9 W. 3. cap. 9.

Firſt Seſſion of 7 & 8 W. 3. cap. 32.
4 & 5 Ann.

Venire to be *de Corpore Comitatus.*

D **A Jury** may find a Thing which is not given unto them in Evidence, if they do know it of their own Knowledge: For they may inform themſelves of the Truth of the Fact they are to try by all poſſible and lawful Means they can, and are not ſolely tied to the Evidence given at the Bar; and therefore they ought to be *De Vicineto:* But a Juryman ſhall not give Evidence of a Matter of Fact to his Companions without being ſworn.

What they may find without Evidence.

E **The** Jury found that the Party releaſed all his Right in the Land, and all Demands; but that only a Copy was ſhewn to them, but not the Releaſe itſelf: And it was held, That this Releaſe might be well found in this Manner to defend a Poſſeſſion. *Cro. Eliz.* 863. *pl.* 41.

Copy of a Releaſe found by a Jury, and well.

F **The** Omiſſion of a Jury to inquire of Damages on a Nonſuit in Replevin, may be ſupplied by a Writ of Inquiry. 5 *Mod.* 77. 118, 119.

Where the Omiſſion of a Jury to inquire of Damages, may be ſupplied by a Writ of Inquiry.

G **The** firſt twelve Men returned upon a Jury that do appear, are to be ſworn and try the Cauſe, if none of them be challenged: But if ſome of them be challenged, and the Challenge is alſo made good againſt them, then ſo many more of thoſe that remained above the Number of twelve ſhall be

Which of the Jurors are to try the Cauſe.

be taken in Order as they ſtand in the Panel to fill up the Number that wanteth, to make it a full Jury.

Thoſe of the Jury which are not ſworn, muſt, after twelve are ſworn, depart.

A If more than twelve Men do appear at a Trial, then after the Twelve are ſworn, the remaining Perſons ſummoned to be Jurors in the Cauſe, muſt not continue upon the Stand with thoſe that are ſworn, but muſt depart; ſo that thoſe which are ſworn may not be hindred in attending to the Evidence.

Where the Jury may eat and drink.

B The Court may give the Jury Leave to eat ſome ſmall Matter, and to drink at the Bar, after ſome Evidence is given to them, if the Plaintiff and Defendant will conſent unto it: But they may not eat or drink out of Court, nor have Fire or Candle.

A Juror committed to the *Fleet* for having Eatables in his Pocket.

C A Juror was committed to the *Fleet*, and afterwards fined 20*s*. for having Conſerve of Barberries found about him. *Welleden & Elkington*, 2 *Plow.* 519. *a. Benl.* 311.

Jurors fin'd for eating, others for having Eatables.

D Some of the Jurors had Eatables in their Pockets and did eat; they were fined five Pounds a Man: Some had Eatables and did not eat; they were fined forty Shillings a Man. *Note*, They were their own, and their Verdict adjudg'd good; for they were not given them by any Party in the Action. 1 *Leon.* 132. Caſe 181.

Where Eating and Drinking ſhall not avoid the Verdict.

And where it ſhall.

E That if Jurors do after they are ſworn, and before and after that they are agreed of their Verdict, eat and drink, and afterwards give their Verdict; this is good, and the Verdict ſhall not for that Act be avoided, but they are finable: But if any of them had been treated at the Coſt of any one of the Parties, or of their Friends, either before or after they were agreed, and they give their Verdict on that Side which treated them, this makes the Verdict void. *Dalliſ.* 10. *pl.* 2. *Cro. Jac.* 21.

What the Secondary is to do, if one of the Attornies will not attend him upon Notice.

A Contempt in the Attorney for not attending.

F A Rule was made for a Trial at the Bar, wherein it was ordered, That the Secondary in the Preſence of the Attornies on both Sides ſhould nominate forty-eight Jurors, and each Party to ſtrike out twelve: The Plaintiff's Attorney attended the Secondary, and ſummoned the Defendant's Attorney to attend likewiſe to ſtrike the Jury; but the Defendant's Attorney would not attend; and thereupon the Secondary nominated forty-eight in the Preſence of the Plaintiff's Attorney only. Now, upon a Motion to ſet this aſide, the Court ſaid, That if the Rule had been by Conſent of the Attornies, it had been a Contempt in the Attorney for not attending. They alſo ſaid, That it was the Defendant's Attorney's Fault, and a Trick in him; and therefore it was but reaſonable that the Jury ſhould ſtand. But it being inſiſted on by the other Side, That the Defendant's Attorney was then ſo ingaged in Buſineſs that he could not attend: And alſo, That there being forty-eight nominated, and the Plaintiff's Attorney had Power to ſtrike out but twelve, ſo there would be twelve more than there ought to be: Whereupon the Court thought fit to order a new Jury to be ſtruck; and made it a ſtanding Rule, That hereafter the Rule ſhall be, for the Nomination to be in the Preſence of the two Attornies; and if either of them ſhall refuſe to come, then the Secondary to proceed *ex Parte*, and the Secondary ſhall ſtrike twelve for the Attorney who makes Default. *Trin.* 8 *W. B. R.*

A ſtanding Rule for the Nomination to be in the Preſence of the Attornies.

If either refuſe, the Secondary to proceed *ex Parte*.

A **If** a Juror be challenged, and the Challenge is entered by the Secondary, that Juror cannot be after that ſworn as a Juryman to try that Cauſe wherein he was challenged, although the Party will wave his Challenge, if there be Jurymen enough to try the Cauſe; but if there be not, then the Cauſe of Challenge muſt be ſhewn and tried; and if it be found no good Challenge, then he may be ſworn.

What to be done where a Juror is challenged.

Where the Cauſe of Challenge muſt be ſhewn and tried.

B **A Jury** caſts Lots for their Verdict, and it was ſet aſide, and they ordered to attend to be fined. 2 *Lev.* 205. 140.

A Jury caſts Lots for their Verdict, it is fineable.

C **When** the Jury were gone from the Bar, they called one of the Witneſſes to recite the ſame Evidence he gave in Court, and afterwards they found for the Defendant; and upon Complaint being made to the Judge, he returned all this Matter upon the *Poſtea*, and the Verdict was ſet aſide, and a *Venire facias de novo* awarded. *Cro. Eliz.* 189. *pl.* 17.

Where a Verdict was ſet aſide, and for what. And a new *Venire facias*.

D **A Jury** finds the Iſſue and more; it is good for the Iſſue. 2 *Lev.* 253.

A Jury finds the Iſſue and more, it is good for the Iſſue.

E **The** Jurors are not to meddle with any Matter which is not Iſſue; if they do, it is but Matter of Surpluſage and to no Purpoſe. 3 *Leon.* Caſe 121.

A Jury are not to meddle with any Thing out of their Iſſue.

F **In** an Appeal eight of the Jurors agreed to find Not Guilty, the other four would find it Murther; and the next Morning two of the four agreed with the eight, at laſt the other two and the reſt came to this Agreement, *viz.* That they would offer Not Guilty, and if the Court diſlik'd of it, then they ſhould change the Verdict and find him Guilty. The Foreman at the Bar pronounc'd the Verdict Not Guilty; but the Court not liking it, examined every one by the Poll, Whether that was their Verdict? and ten of them ſeverally affirmed their

In an Appeal of Murther, eight agreed to find Not Guilty, four were for Guilty. Then they came to an Agreement.

The Court diſlik'd the Verdict.

They diſcover the Matter, and go out and bring in another Verdict; and are fin'd and impriſon'd.

Verdict, but the two laſt diſcovered the whole Matter; whereupon they went back and then brought him in Guilty. The Foreman was fined One hundred Marks, the next ſeven forty Pounds each, the next two twenty Pounds each, and alſo impriſon'd; and the laſt two diſmiſs'd, yet much blamed by the Court. *Cro. Eliz.* 779. *pl.* 17.

Wherein.

An Action lies not againſt a Juryman for a malicious Indictment or Preſentment. *Comberb.* 116. A

Jury on Life and Death.

Quære, **If** a Jury in Caſes of Life or Member, may be diſcharged without giving their Verdict. *Comberb.* 401, 402. B

Of ſtriking Juries.

See the Rules of ſtriking Juries by the Maſter, and the Practice therein. *Salk.* 405. C

Evidence.

Jurors ought to acquaint the Court that they can give Evidence before they are ſworn. *Salk.* 405. D

Damages.

Where the Jury may ſever the Damages for which the Plaintiff has declared. *Mod. Caſes in Law and Equity* 78. E

A ſpecial Jury with Conſent.

A Special Jury is to be by Conſent, and not to be challenged. *Mod. Caſes in Law and Equity* 245. F

Without.

But ſee divers Precedents of Special Juries without ſuch Conſent. *Mod. Caſes in Law and Equity* 247, 248. G

A ſpecial Jury without Conſent.

If there be any lawful Objection to the Sheriff, a Special Jury may be ſtruck by the Maſter without Conſent. *Mod. Caſes in Law and Equity* 248. H

Under-Sheriff Attorney and Bail.

The High-Sheriff may return the Jury, though the Under-Sheriff be both Attorney and Bail for the Defendant. *Mod. Caſes in Law and Equity* 247. I

The Law as to Juries is pretty much alter'd, for which ſee the Act of 3 *Geo.* 2. *cap.* 25. for the Eaſe of Jurors and better regulating Juries, by which the Jurors are now ballotted for. K

Juſtice of Peace.

See { Good Behaviour.
Iſſues.
Officers.

A Juſtices of the Peace, or rather Commiſſioners of the Peace, do act by Vertue of the King's Commiſſion to them granted for that Purpoſe.

A Juſtice of the Peace, what.

B A Man may be a Juſtice of Peace in one Part of *Yorkſhire*, and yet not be a Juſtice of Peace in every Part of the County: *Hill.* 22 *Car. B.R.* For *Yorkſhire* is divided into divers Parts, called Ridings, *viz.* into the Eaſt-Riding, Weſt-Riding and North-Riding; and he may be a Juſtice of Peace in one of thoſe Ridings, and yet not a Juſtice of Peace in another of thoſe Ridings; but generally a Juſtice of Peace of a County, is a Juſtice of Peace all the County over; although it be not ſo in *Yorkſhire*, by Reaſon of the large Extent thereof, which is thus divided for the more eaſy and better Government thereof.

A Man may be Juſtice of the Peace in one Part of *Yorkſhire*, and not in all the County.

C The Peace was prayed upon Articles read in Court againſt one; one of which Articles was, That the Party againſt whom the Peace was prayed, did threaten that he would burn down the Houſe of him that prayed the Peace, and upon that Article it was granted: *Hill.* 21 *Car. B.R.* And upon good Reaſon; for tho' Words are but Wind, yet they often cauſe the Breach of the Peace, and threatning Words do moſtly proceed from Malice prepenſed, which is apt to break out into open Violence. To grant the Peace againſt one, is to grant that the Proceſs of the Court may iſſue out of the Crown-Office againſt him, to bring him into the Court, to find Sureties to be bound with him in a Recognizance to the King to keep the Peace towards the King's Liege People, but more eſpecially towards the Party that prays the Peace.

Peace granted againſt one for threatning to burn a Houſe.

D The Juſtices of the Peace ought by the Duty of their Places to attend at the Aſſizes, and at the Publick Seſſions of the Peace held for the County, whereof they are Juſtices: *Paſch.* 23 *Car. B.R.* To diſpatch the Publick Buſineſs concerning the Peace and good governing of the County.

Juſtices of Peace muſt attend at the Aſſizes and Seſſions.

The Commiſſion of Oyer and Terminer extends to them.

The Commiſſion of Oyer and Terminer doth extend to thoſe that are Juſtices of the Peace. *Paſch.* 23 *Car. B. R.* A

A Juſtice may without Warrant arreſt and commit to Priſon for a Felony done in his View.

A Juſtice of Peace may actually arreſt and commit the Party to Priſon, that doth a Felony in his own View, without any Warrant made under his Hand and Seal to arreſt him; for there needs no other Proof of the Matter: But if there be an Information made to a Juſtice of Peace, that one hath committed Felony, there the Juſtice muſt make a Warrant under his Hand and Seal to arreſt the Felon: *Q.* 1650. *B. S.* For it muſt appear by what Authority the Party was committed. B

A Man bound to the Peace in the Crown-Office, will be kept there during Life, unleſs the Court diſcharge him.

Where one is bound to the Peace in the Crown-Office, they will keep him there during his Life, unleſs upon Application made to the Court, they think fit to diſcharge him; for if the Party is become reformed, there will be no Cauſe to continue him and his Sureties ſo long bound. C

A Juſtice may require a Bond for keeping the Peace, with a great Penalty.

A Juſtice of Peace may require a Bond or Recognizance with a great Penalty of one for his keeping the Peace if he ſee Cauſe for it, in regard that the Party to be bound is a dangerous Perſon, and likely to break the Peace, and to do much Miſchief: *Paſch.* 1652. *B. S.* For there cannot be too much Caution uſed in preventing the Breach of the Peace in ſuch Caſes. D

B. R. will ſometimes bind to the Peace, tho' no Oath be made againſt the Perſon.

This Court will bind one to the Peace if they ſee Cauſe to do it, although there be no Oath made by any Perſon againſt him that is to be bound, that he goeth in Fear of his Life of him: *Trin.* 1652. *B. S.* For the Oath of a Party is but to manifeſt unto the Court, that there is juſt Cauſe why the Party ſhould be bound unto the Peace; but if the Court be ſufficiently ſatisfied without ſuch an Oath, that there is good Cauſe to bind the Party to the Peace, they may do it without ſuch an Oath; for where Things are in themſelves manifeſt, there needs no Evidence to prove them. E

He againſt whom the Peace is ſworn and prayed, ought to be committed, unleſs he find Sureties.

If one do take his Oath in this Court againſt another, that he doth go in Fear of his Life of him, and prays the Peace againſt him; he againſt whom the Peace is thus ſworn, and the Peace prayed, ought to be committed to Priſon, if he do not find Sureties to keep the Peace, although there be no Articles exhibited and ſworn againſt him, 1652, *B. S.* For there appears ſufficient Cauſe by the Oath for the Court to do it, tho' there be no Articles exhibited, as the uſual Courſe is to do. F

A Juſtice of Peace muſt have 20 *l. per Ann.* 18 H. 6. cap. 11.

A Juſtice of Peace muſt have Lands or Tenements of the yearly Value of 20 *l.* G

A **But** now by a Statute made 5 *Geo.* 2. It is enacted, that from and after the 25th Day of *March*, 1733, no Perſon ſhall be capable of being, or of acting as a Juſtice of the Peace, for any County in *England* or *Wales*, who ſhall not have an Eſtate of Freehold or Copyhold, to and for his own Uſe and Benefit, in Poſſeſſion for Life, or for ſome greater Eſtate, either in Law or Equity; or an Eſtate for Years determinable upon one or more Life or Lives, or for a certain Term originally created for One and twenty Years, or more, in Lands, Tenements, or Hereditaments lying in *England* or *Wales*, of the clear yearly Value of One hundred Pounds, over and above what will ſatisfy and diſcharge all Incumbrances that may affect the ſame.

No Perſons to be Juſtices who have not 100*l.* a Year clear of Incumbrances.

B **No** Attorney, Solicitor or Proctor in any Court whatſoever, ſhall, after the 25th of *March*, 1733, be capable to continue, or be a Juſtice of the Peace within any County of *England* or *Wales*, during ſuch Time as he ſhall continue in the Buſineſs and Practice of an Attorney, Solicitor, or Proctor.

Attornies, Solicitors, and Proctors incapacitated.

C **If** any Perſon not qualified according to this Act, ſhall, after the 25th of *March*, 1733, accept or take upon himſelf the Office of a Juſtice of Peace, or ſhall do any Act as ſuch, the Perſon ſo offending, ſhall, for every ſuch Offence, forfeit and pay the Sum of One hundred Pounds; one Moiety to the King, his Heirs and Succeſſors, the other to him or them that will ſue for the ſame, by Action of Debt, Bill, Plaint or Information, in any of the Courts at *Weſtminſter*, in which no Eſſoin, *&c.* ſhall be allowed.

Perſons acting as Juſtices, not ſo qualified, to forfeit 100 *l.*

D **This** Act ſhall not extend to any City or Town, being a County of itſelf, or to any other City, Town, Cinque Port, or Liberty, having Juſtices of the Peace within their reſpective Limits and Precincts by Charter, Commiſſion, or otherwiſe.

Not to extend to Cities which are Counties, or other Places having Juſtices by Charter.

E **Nor** to incapacitate any Peer, or Lord of Parliament, or the eldeſt Son, or Heir apparent of any Peer or Lord of Parliament, or of any Perſon qualified to ſerve as Knight of a Shire, or to incapacitate or exclude the Officers of the Board of Green-Cloth from being Juſtices of the Peace within the Verge of his Majeſty's Palaces, or to incapacitate or exclude the Commiſſioners and Principal Officers of the Navy, or the two under Secretaries in each of the Offices of Principal Secretary of State, from being Juſtices of the Peace, in and for ſuch maritime Counties and Places where they uſually have been Juſtices of Peace.

Nor to the eldeſt Sons of Peers, or of Knights of Shires.

Nor to the Board of Green-Cloth.

F **Nor** ſhall it extend to any of the Heads of Colleges or Halls in either of the two Univerſities of *Oxford* and *Cambridge*, but that they may be made Juſtices of the Peace of and in the ſeveral Counties of *Oxford*,

Nor to Heads of Colleges of either Univerſity.

Berks and *Cambridge*, and the Cities and Towns within the ſame, and execute the Office thereof, as fully and freely in all Reſpects as heretofore they have lawfully uſed to execute the ſame, as if this Act had never been made.

A Juſtice of Peace may out of his County take an Oath of a Perſon robbed.

A Juſtice of Peace may out of his County take the Oath of a Perſon robbed. *Cro. Car.* 213. A

What a Juſtice of Peace may do out of his County, and what not.

Where a Juſtice of Peace doth not an Act to compel another to perform, as to impriſon for Non-performance, or to command any one to be impriſoned; ſuch Acts cannot be done out of his Juriſdiction: But he may take Informations any where, though to prove Offences in the County where they are committed, or take a Recognizance to proſecute. *Ibid.* B

The firſt Appointment of Juſtices of the Peace.

1 E. 3. cap. 16.

For the better Keeping and Maintenance of the Peace, the King wills, That in every County good Men and lawful, which be no Maintainers of Evil or Barretors in the County, ſhall be aſſigned to keep the Peace. 1 *Ed.* 3. *cap.* 16. C

A Juſtice ought not to bind to the Good Behaviour upon a general Information.

A Juſtice of the Peace ought not to bind any Perſon to the Good Behaviour upon a general Information; but ſomething in particular, which is a Miſbehaviour, muſt be ſhewn: And if the Party accuſed doth refuſe to be ſo bound, and find Sureties to be of Good Behaviour, the Juſtice of the Peace ought to ſend the Party to the Gaol for refuſing of it, *Paſch.* 23 *Car. B. R.* For he that deſires to have one bound to the Good Behaviour, muſt ſhew ſome particular Miſcarriages wherein the Miſ-behaviour of the Party conſiſts; for *accuſatio generalis eſt nulla*; for no Defence can be made to it for the Incertainty thereof. D

The Magiſtrate is not bound to ſhew the Cauſe in his Warrant; yet in his Commitment he muſt.

Although a Mayor or Magiſtrate may ſend his Warrant for any one to examine him, and is not bound to ſhew the Cauſe in his Warrant, nor the Officer to know the Cauſe; yet when he is come before the Mayor and committed, then the Cauſe is to be diſcovered. *Cro. Jac.* 81, *pl.* 4. E

Where an Action lies againſt a Juſtice of the Peace, and where not.

If a Man be accuſed to a Juſtice of the Peace for Felony, and he ſends his Warrant to arreſt him, although the Accuſation be falſe the Juſtice is excuſed; but if there were no ſuch Accuſation of Felony againſt him, then an Action will lie againſt the Juſtice. 1 *Leon.* 187. Caſe 273. F

What a Juſtice may do with a ſuſpected Perſon, and how long he may keep him to examine before he ſends him to Gaol.

In Falſe Impriſonment the Defendant juſtifies that he was a Juſtice of the Peace, and that a Robbery was committed, and the Plaintiff ſuſpected, and brought before him, and becauſe he ſeemed ſuſpected he detained him in his Houſe the eighteen Days mentioned in the Declaration, to examine him and *B.* who G who was not apprehended, and afterwards, ſuch a Day, delivered him over to the new Mayor, and traverſeth the Impriſonment in *London*: And the Inducement held to be naught: For a Juſtice cannot detain a ſuſpected Perſon in Priſon, only to examine him, above three Days, and within that Time to take his Examination, and ſend him to Gaol; for he ought not to detain him ſo long as he pleaſes in Priſon in his own Houſe, but muſt commit him to the Common Gaol. *Cro. Eliz.* 829. *pl.* 35.

An Action lies not upon an Accuſation before a Juſtice of the Peace for Suppoſition of Felony.

A **If** one brings another before a Juſtice of the Peace for Suppoſition of Felony, without any juſt Cauſe, yet no Action lies. *Cro. Jac.* 432.

Officer not puniſhable for executing a void Warrant.

B **A Juſtice** of the Peace makes a Warrant to arreſt a Man of Felony who is not indicted; altho' the Juſtice err in his Warrant, yet he who executes the Warrant ſhall not be puniſhed. 10 *Rep.* 76. *b.*

May plead the General Iſſue:

C **If** a Juſtice of the Peace be ſued for any Thing which he doth in his Office, he may plead the General Iſſue, and give the Special Matter in Evidence; and if a Verdict goes for him, or the Plaintiff be nonſuit, he ſhall have double Coſts. See the Statute King *James* I.

And ſhall have double Coſts.

Juſtices of *Oyer* and *Terminer.*

D **Juſtices** of *Oyer* and *Terminer* cannot hold Plea but of Indictments taken before themſelves; but the Juſtices *ad placita tenend'* ſitting by Patent may. *Skinner* 32.

Judgment of the Seſſions.

E **Whether** a Judgment of the Seſſions where they have Power by Statute to commit being thus, *It is ordered that he be committed*, be good, it not being by Words *De preſenti*, as in *B. R.* where the Judgment is *Ideo committitur*. *Ibid.* 80.

Commitment.

F **Where** the Commitment of Juſtices of the Peace by Virtue of a Statute is from a wrong Time, the Court of *B. R.* will diſcharge it. *Ibid.* 81.

Diſcharging Debtors.

G **The** Juſtices may diſcharge poor Priſoners againſt all Creditors to whom Notice is given; but where a Creditor is left out of the Liſt, he is not diſcharged againſt him, tho' Notice be given. *Ibid.* 116.

Conventicle.

H **Upon** a Conviction upon the Statute of 22 *Car.* 2. in a Corporation for being at a Conventicle, the Appeal ſhall be to the Quarter-Seſſions of the Corporation. *Ibid.* 122.

Intendment.

I **No** Partiality or Favour in the Juſtice ſhall be intended. *Ibid.* 123.

Of Poors Rates.

K **The** Juſtices are only to aſſeſs the *Quantum* that other Pariſhes are to pay towards the Relief of the Poor of a Pariſh in the ſame Town, and the Rate is to be made by the Overſeers of the Poor of the Pariſh. *Ibid.* 258.

The like. **The** Juſtices may tax particular Perſons of another Pariſh where the proper Pariſh is over-burthen'd. *Skinner* 259. A

The like. **Ten** Pounds *per Ann.* Freehold, as much within the Statute 14 *Car* 2. for the Settlement of a poor Man, as ten Pounds Rent, *Quære*. *Ibid.* 268. B

Words. **Scandalous** Words ſpoken of a Juſtice of Peace, whether actionable. *Carthew* 14. C

Authority given to Juſtices of the Peace muſt be exactly purſued. *Salk.* 475. D

Forgery. **Indictments** for Forgery lie not before Juſtices of the Peace. *Vide* Title **Convictions** and **Indictments**. *Ibid.* 406. E

Removals of Poor. **See** their proper Method of Proceeding on 14 *Car.* 2. for Removals of Poor. *Ibid.* F

Uſury. **They** have no Juriſdiction upon the Statute of Uſury. *Ibid.* 680. G

Of their Orders. **See** where their Orders are not void but voidable. *Ibid.* 674. H

Where they have no Juriſdiction. **Where** Property is in Queſtion the Juſtices of Peace have no Juriſdiction. 3 *Salk.* 217. I

Of Orders of Juſtices. **Juſtices** of the Peace in their Orders, *&c.* ought to ſhew they have proceeded according to the Power they have by Law, or they ſhall be compell'd thereto. *Mod. Caſes in Law and Equity*, 4. K

Information. **An** Information granted againſt a Juſtice for ſending one to the Houſe of Correction without Cauſe. *Ibid.* 45. L

The like. **An** Information was mov'd for refuſing to grant a Warrant, but denied, and the Proſecutor ordered to pay Coſts. *Ibid.* 387. M

Of judicial and miniſterial Acts. **And** Note, in judicial Acts by the Juſtices all Things ſhall be intended regular till the contrary appear; but *aliter* of miniſterial Acts, for there all muſt appear to be right. *Ibid.* 378. N

Juſtification.

Juſtification.

See
De injuria ſua propria.
Iſſues.
Pleader.
Que eſt eadem.
Replevin.
Traverſe.

A **A Juſtification is a Plea where the Defendant is ſued in an Action of Treſpaſs, or for a Tort, &c. and the Defendant owns the Matter in his Plea, and juſtifies it as lawful.**

Juſtification, what.

B **Regularly** at the Common Law, if the Defendant hath Cauſe of Juſtification or Excuſe, he muſt not plead Not Guilty, for then upon the Evidence it will be found againſt him, becauſe in Effect he confeſſeth the Action; but he ought to plead the Special Matter, and ſo confeſs and juſtify what he hath done. See *Co. Lit.* 282.

How the Defendant ought to plead if he has Cauſe of Juſtification.

C **Where** any Perſon juſtifies by Licence, Warrant, or Authority, he ought to ſhew in Pleading the Time certain of his Juſtification, and that the Party under whom he juſtifies had an Authority for granting ſuch a Warrant, *&c.*

If a Man juſtifies by Licence, he ought in Pleading to ſhew the Time of his Juſtification.

D **In** Treſpaſs, Battery, and Impriſonment, the Defendant juſtifies by a Sheriff's Warrant delivered him 17 *Maii.* The Plaintiff maintains his Declaration, *abſque hoc* that the Writ was delivered to the Sheriff before the Battery and Impriſonment. Defendant rejoins that before the Return of the Writ it was delivered to the Sheriff, *Scilt' præd.* 27 *Maii*, and that before the Arreſt he had not Notice, but that it was delivered to the Sheriff. The Plaintiff ſurrejoins, that before the Arreſt the Writ was not delivered to the Sheriff. The Defendant rebuts as

In Treſpaſs, Battery, *&c.* Defendant juſtifies by a Sheriff's Warrant, Plaintiff maintains his Declaration, *abſque hoc* that the Writ was deliver'd before the Battery. Defendant rejoins, that it was deliver'd before the Return, and that before the Arreſt he had not Notice. Plaintiff ſurrejoins, that before the Arreſt, the Writ was not deliver'd to the Sheriff. Defendant rebuts as before, and tenders Iſſue; Plaintiff demurs, and Judgment for the Defendant.

before, that he had not Notice, but that the Writ was delivered to the Sheriff before the Arreſt, and tenders Iſſue; whereupon the Plaintiff demurs, and the Court gave Judgment for the Defendant; for 1. It is not material, if the Writ be delivered to the Sheriff before the Warrant and Arreſt, ſo long as *rei veritate*, there is a Writ which warrants the Whole. 2. That there being a Writ and Warrant thereupon, the Bailiff ſhall not be charged for executing of it, for he is not Privy nor had Notice of the Time of the Delivery of it to the Sheriff, and he had tendered an Iſſue upon the Notice, which the Plaintiff had refuſed to accept: *Vide* 3 *Lev.* 93. See many Caſes where Judge and Officer of an Inferior Court, and alſo the Plaintiff may juſtify the Impriſonment by Proceſs out of ſuch Court, although the Cauſe aroſe out of the Juriſdiction, *&c.* 2 *Lut.* 1560, 1572, *&c.*

A Servant may juſtify a Battery in Defence of his Maſter.

A **A Servant** may juſtify a Battery in the Defence of his Maſter. 25 *H.* 6. 51.

Where the Action concerns a Thing tranſitory, if the Defendant juſtifies in one Place, it is a Juſtification in all: Otherwiſe if the Action concern a Thing local.

B **Where** the Action concerns a tranſitory Thing, if the Defendant do juſtify the taking or doing in one Place, this is a Juſtification in all Places; but if the Action concern a local Thing, a Juſtification in one Place is not a Juſtification in another Place: *Paſch.* 24 *Car. B. R.* For in the former Caſe the Place is not material, but the meer doing or taking of the Thing is the Subſtance upon which the Action is grounded; but in the latter the Place is material, for the Defendant, it may be, may be able to juſtify the doing or the taking of the Thing in one Place, and yet he may be guilty in another Place.

Where Juſtification in Aſſault is good, without ſaying, *Quæ eſt eadem tranſgreſſio.*

C **Treſpaſs** and Aſſault ſuch a Day and Place. The Defendant ſaith, That the ſame Day and Place he arreſted the Plaintiff by Warrant: And held good without ſaying, *Quæ eſt eadem tranſgreſſio*, becauſe the Defendant agrees with the Plaintiff, and anſwers him; but if he had juſtified at another Day or Place, then the Concluſion ought to be *Quæ eſt eadem*, &c. *Kitch.* 237.

Treſpaſs and Aſſault in one Place: Defendant juſtifies in another, *quæ eſt eadem*, &c. and held a good Plea becauſe the Juſtification is local.

D **Treſpaſs** and Aſſault in *London*, the Defendant juſtifies the gently putting his Hands upon him, to put him out of Poſſeſſion of his Houſe in *B. in Com. D. quæ eſt eadem*, *&c.* and held a good Plea, becauſe the Juſtification is local, *viz.* the maintaining of the Poſſeſſion; but if it had been an Action of Battery, and the Defendant had juſtified by Reaſon of an Aſſault in another County, and traverſed the County in the Declaration, there it had been ſtark naught; becauſe an Action of Battery only without the Defence of a Poſſeſſion is perſonal and tranſitory, and if the Battery was committed at *York* it was committed at *London*. *Cro. Eliz.* 705. and 842.

A **In** Aſſault and Battery the Defendant juſtifies by Virtue of a Warrant upon a *Latitat*, and doth not produce it in Court. *Curia.* The Warrant being executed is returned to the Sheriff, and not requiſite to be ſhewn: *Cro. Jac.* 372. *pl.* 1. But he muſt ſhew it when he juſtifies for a Rent-Charge, or ſuch Things which have Continuance.

Juſtification by a Sheriff's Warrant need not to be produc'd; and why.

Aliter where the Juſtification is for a Rent-Charge, &c.

B **An** Officer of the Admiralty-Court juſtifies by Warrant from that Court, without ſhewing the Cauſe to be *infra Juriſdictionem*, but held good: Becauſe it is ſufficient for the Officer to obey his Warrant, and that ſhall excuſe him. 2 *Lev.* 131. See Title **Bailiff.**

What ſhall excuſe an Officer juſtifying under a Warrant.

C **An** Officer may juſtify by Writ, without ſetting forth the Judgment; but the Plaintiff cannot: Becauſe the Sheriff and his Bailiffs are obliged to obey the King's Writ, without inquiring after the Judgment; but if the Party juſtifies, he muſt plead as well the Judgment as the Writ. 3 *Lev.* 20.

How the Officer may juſtify by Writ, and how the Plaintiff muſt.

D **If** the Sheriff will juſtify an Arreſt upon a *Latitat*, he muſt plead that it is returned; but his Servant need not, for he hath no Means to enforce the Sheriff to make a Return thereof. *Cro. Car.* 446. *pl.* 11. 447.

Where the Sheriff juſtifies an Arreſt, he muſt ſhew that the Writ is return'd: But his Bailiff need not.

E **How** the Judge and Officer are to juſtify in an Action of Falſe Impriſonment, for iſſuing of Proceſs out of an Inferior Juriſdiction, and arreſting of the Plaintiff where the Cauſe of Action aroſe out of the Juriſdiction; and alſo how to juſtify for the Party who commenced the Action there. *Lutw.* 1560 to 1562, *&c.* 935 to 937. *Vide Poſtea.*

How an Officer and Judge of an Inferior Juriſdiction muſt juſtify in Falſe Impriſonment.

F **In** pleading of the Proceedings in a Court-Baron, Hundred or County-Court, you muſt not plead them with a *Taliter Proceſſum eſt*; but you muſt plead them all particularly: Becauſe they not being Courts of Record, all their Proceedings ſhall be drawn into Iſſue, upon the Replication of *De injuria ſua propria. Trin.* 33 *Car.* 2. *B. R.*

How Proceedings in a Court-Baron to be pleaded.

G **If** a Bailiff arreſts a Man by Proceſs out of an Inferior Court, for a Cauſe which ariſes out of their Juriſdiction, he may juſtify by Virtue of his Writ; But the Plaintiff cannot: Becauſe it lay in his own Knowledge where the Cauſe of Action did ariſe. *Paſch.* 31 *Car.* 2. *B. R. Vide Antea.*

How the Plaintiff may juſtify, and how the Officer of an Inferior Juriſdiction.

H **In** Treſpaſs the Defendant juſtified under a Preſentment in a Court-Leet, without a Warrant from the Steward; and naught: But in an Avowry, as Bailiff to the Lord, no need to alledge a Warrant or Precept from the Steward: *Show. Rep.* 62. See the Difference between a Juſtification in Treſpaſs, and where in Replevin. See Title **Replevin.** See Title **Bailiff.**

Where in Treſpaſs the Defendant muſt juſtify under a Warrant.

Need not in Replevin.

A Warrener may kill a Dog in his Warren which uſed to kill his Conies.

A **A Warrener** may juſtify the killing of a Maſtiff Dog, which uſed to come into his Warren to kill Conies. *Cro. Jac.* 45. *pl.* 4.

A Servant may juſtify a Battery in Defence of his Maſter.

B **A Servant** may juſtify a Battery in Defence of his Maſter. 35 *H.* 6. *pl.* 51.

Where you juſtify *Dicto Tempore*, you need not ſay, *Quæ eſt eadem.*

C **Where** you juſtify *Dicto Tempore* in the Declaration, you need not ſay, *Quæ eſt eadem tranſgreſſio*; becauſe you agree with the Plaintiff in the Time and Place mentioned in his Declaration, and give an Anſwer to it. *Mich.* 5 *W.* & *M. B. R.*

Where *Quæ eſt eadem* held good without a Traverſe.

D **Where** the Fact is laid to be 1 *Nov.* and the Defendant juſtifies 2 *Nov.* *Quæ eſt eadem tranſgreſſio*, held good without a Traveſe, the Day not being material: But if the Day had been material, it had been naught. 1 *Lev.* 241.

A Juſtification in Treſpaſs, *Quæ eſt eadem.*

E **A Juſtification** in Treſpaſs, *Quæ eſt eadem*, with a Traverſe of the Time, was held good: Becauſe the Concluſion *Quæ eſt eadem*, with a Traverſe of another Place, without Traverſe of another Time, is good. 3 *Lev.* 227.

How to plead where the Juſtification is local, and how where it is tranſitory, *Quæ eſt eadem.*

F **Where** the Matter of the Juſtification is local, there he ought to ſhew the Cauſe ſpecially, and traverſe the Place; but not where it is tranſitory: But it ſufficeth altho' he juſtifies in another Place to ſay, *Quæ eſt eadem captio. Cro. Eliz.* 667. *pl.* 21.

A Man cannot juſtify a Treſpaſs upon another for fear, and why.

G **A Man** cannot juſtify a Treſpaſs upon another for fear of Threats, *&c.* or Compulſion, becauſe the Party hath his Remedy againſt thoſe who compelled him. *Aleyn* 35.

Where the County is traverſable.

H **Falſe Impriſonment** in the County of *D.* the Defendant juſtifies as Sheriff of *S.* for taking of him at *E.* in his County upon a Writ; there he muſt traverſe the taking of him in the County of *D.* 2 *Leon.* Caſe 184.

A Man may take his own Goods where-ever he finds them.

I **A Man** may juſtify the taking of his own Goods in any Place where he finds them. *Cro. El.* 329. *pl.* 3.

Where a Juſtification is not good without a Traverſe, and where it is; confeſſing and avoiding.

K **Where** one juſtifies by a Leaſe from *J. S.* the Plaintiff ſays, That *J. S.* enfeoffed him before, it is not good without a Traverſe: Or elſe to ſay, That *J. S.* after the Feoffment entred, and diſſeiſed him, and made the Leaſe, and afterwards he reentred; ſo thereby he confeſſes and avoids the Seiſin alledged. *Cro. El.* 754. *pl.* 17.

Juſtification of a Tranſitory Thing, how to be.

L **Juſtification** of a tranſitory Thing ought to be at the ſame Place where the Action is brought. 3 *Lev.* 113.

A **How** to juſtify in Treſpaſs for taking of Goods in Execution. 3 *Lev.* 113.

How in Treſpaſs for taking of Goods in Execution.

B **Where** a Man in Treſpaſs and Aſſault juſtifieth in another County, and traverſeth that he was guilty *alibi vel alio modo*, and doth not ſay *quam* in the County wherein he juſtifies, it is naught. *Vide* 3 *Lev.* 113. *Cro. Jac.* 372. *pl.* 1.

How to juſtify in another County.

C **The** Defendant in Treſpaſs for taking of Goods *in Com. S.* juſtifies in *Briſtol*, *Abſque hoc* that he is guilty *in Com. Somerſet*; this is naught: Becauſe he ought to ſay, *Abſque hoc* that he is guilty *alibi quam in Briſtol*, this being a Tranſitory Treſpaſs. *Thompſon & Hook*, 7 *W. B. R.*

How to traverſe another County.

D **Where** a Juſtification under a Judgment in a Court-Baron was ill, becauſe a *Levari facias* was ſued out when it ſhould have been a *Diſtringas*. 3 *Salk.* 219.

Juſtification ill.

E **If** one enter upon my Land, and I deſire him to go off and he refuſes, I may uſe Violence, but muſt not wound him. *Skin.* 228.

Where a Man may or may not juſtify.

F **In** Aſſault, Battery and falſe Impriſonment, the Plaintiff counted of a Detainer *quouſque*, he paid 10 *s.* the Defendant juſtifies under the Command of the Court of Conſcience in *London*, and pleads that the Plaintiff was ſummoned to appear on *Nov.* 1. and that the Proceſs was continued till *Nov.* 30. and that there was an Order to take him and carry him to the *Compter*, and that *Virtute Ordinis prædict'* he arreſted and detained him till he paid 11 *s.* and 10 *d.* and it was ruled that he need not ſhew the Continuances, for upon Default of Appearance, the Plaintiff might be ordered to appear at another Day, and that it ſuffices if the Defendant can juſtify the Impriſonment, which he may do if it be for 10 *s.* *&c.* for the Sum is not material; and if the Plaintiff would take Advantage, he ought to ſhew that he had paid the 10 *s.* and that the Defendant after detained him, for otherwiſe the *Quouſque* need not be anſwered, being only in Aggravation of Damages. *Skin.* 664.

Juſtification by Virtue of Proceſs from the Court of Conſcience in *London*.

Where he need not ſhew the Continuance.

G **In** Impriſonment, Juſtification by Order of Court of Conſcience to carry the Plaintiff to the *Compter*, held ill, becauſe the Impriſonment was confeſs'd, but not ſhewn to be in the *Compter*. *Salk.* 408.

Juſtification by Order of the Court of Conſcience, where ill.

H **Juſtification** in Treſpaſs for taking a Diſtreſs, but did not ſet forth by Virtue of any Precept, not good. *Carthew* 75.

Juſtification for a Diſtreſs.

I **Juſtification** in his Freehold good in an Action of Treſpaſs, *Quare clauſum fregit*, but not in an Action of Treſpaſs for taking and carrying away his Goods. *Ibid.* 176.

Liberum Tenementum.

Quæ eſt eadem tranſgreſſio.

Juſtification in Treſpaſs where 'tis at the ſame Time and Place, there needs no Averment that 'tis the ſame Treſpaſs. *Carthew* 281. A

Juſtification by a Wife.

A Wife may juſtify an Aſſault in Defence of her Huſband, ſo may a Servant in Defence of his Maſter, but not *vice verſa*. *Salk.* 407. B

In Defence of a Houſe.

Nor can one juſtify in Defence of his Houſe or Cloſe, *&c.* but muſt plead *moliter manus, &c. Ibid.* C

Who is a Treſpaſſer.

He that commands, or even requeſts another to take Goods, *&c.* is a Treſpaſſer. *Ibid.* 409. D

Not traverſable.

And in Treſpaſs ſuch Command, *&c.* is traverſable, *contra* in Replevin. *Ibid.* E

By an Officer.

In Treſpaſs for taking Goods, the Officer need only ſhew a Writ of Execution. *Ibid.* F

In Aid of an Officer.

Secus of a common Perſon, unleſs in Aid of the Officer by his Command. *Ibid.* G

To ſhew the Writ returned.

Where a principal Officer juſtifies under a returnable Writ, he muſt ſhew it was return'd; *ſecus* of ſubordinate Officers. *Ibid.* H

That a Plaint was returned.

A Serjeant at Mace juſtified under a Precept on a Plaint in Replevin, and held ill, becauſe not ſhewn it was return'd. *Ibid.* I

Juſtification ill not ſhewing the Warrant.

Juſtification by 1 *El. c.* 17. held ill for want of ſhewing a Warrant. *Ibid.* 407. K

Muſt ſhew where the Writ iſſued.

In juſtifying under a Writ, 'tis not enough to ſhew where returnable, but muſt alſo ſhew whence it iſſues. *Ibid.* 517. L

Preſentment.

Under a Preſentment in a Court Leet, good. 3 *Salk.* 52. M

Evidence.

Cannot be given in Evidence where it cannot be pleaded. *Ibid.* 218. N

Confeſſion.

Where one cannot juſtify a Treſpaſs, unleſs he confeſs it. *Ibid.* O

Muſt go to the whole.

Where a Juſtification muſt go to the whole, and where to part. *Ibid.* P

Repugnant.

Where 'tis repugnant. 3 *Salk.* 218. Q

King, and King's Grants.

See
Deeds.
Fine.
Grants.
Intruſion.
Non Obſtante.
Offices.
Pardon.
Recovery.

Where the King's Letters-Patents are void.

A IT is a Maxim, That if the Conſideration which is for the Benefit of the King, be it executed or executory, or be it of Record or not of Record, if it be not true, or not duly performed, or if any Prejudice may come to the King by Reaſon of the Nonperformance thereof, the Letters Patents are void. 5 *Rep.* 94. *a.*

The King cannot pardon a common Nuſance.

B **The** King cannot Pardon a common Nuſance, as the not repairing of a common Bridge, *&c.* 2 *Rol. Rep.* 4.

What the King cannot do; where he may diſpenſe, and where not.

C **The** King cannot pardon an Offence done to a particular Perſon. *Vaugh.* 333. But where the Offence wrongs none but the King, he may diſpenſe with it. *Ibid.* 334. Where the Suit is only the King's for a Breach of a Penal Law, and which is not to the Damage of a third Perſon, the King may diſpenſe. *Ibid.* 334, 336. But where the Suit is the King's for the Benefit of a third Perſon, and at the Complaint and Proſecution of ſuch third Perſon, there the King cannot releaſe or diſpenſe with ſuch Suit, without the Agreement of the Party concerned. *Ibid.* 334, 335, 336. See much good Matter concerning what the King may pardon or diſpenſe with, and what not. *Thomas* and *Sorrel*'s Caſe in *Vaugh.* from *fol.* 330. to 359.

How the King's Grants to be conſtrued.

D **The** King's Grants are conſtrued beneficially for his Honour and the Relief of the Subject, and not to make any ſtrict or literal Conſtruction in Subverſion of them. 6 *Rep.* 6. *a.* See 8 *Rep.* from 55 to 57. 10 *Rep.* from 63 to 66.

Of Grants of the King, and Grants of a Subject.

E **For** the Diverſity between the Grants of a King, and the Grants of a common Perſon, ſee in Title **Grants.**

The

A Reverſion, will paſs by a Grant of a Manor.

The King grants a Manor without the Word A *Reverſion*; the Reverſion will paſs by the Grant of the Manor. 6 *Rep.* 56. *a.* What Grants of the King are good, and what not, ſee *Moore*, Caſe 455.

Nice and ſtrained Conſtructions of Letters Patent to be exploded.

Of late Times, nice and ſtrict Conſtructions of B Letters Patents have been ſtrained by ſome, to ſubvert the Force and Effect of them, whereby many good Letters Patents have been drawn into Queſtion, to the Diſhonour of the King, and the diſinheriting of the Subject. 8 *Rep.* 56. *b.*

How it is where the King is deceived in his Grant.

Where the King is deceived in his Grant, the C Words *Ex certa ſcientia & mero motu*, give no Advantage to the Patentee. See 10 *Rep.* from 109 to 115.

The King cannot paſs Lands by Bargain and Sale inrolled, and why.

The King cannot paſs Lands by Bargain and Sale D inrolled, becauſe there cannot paſs any Uſe; for the King cannot be ſeized of an Uſe. *Cro. Jac.* 50. *pl.* 22.

The King cannot take an Eſtate but by Record.

The King cannot take an Eſtate, but by an Inrol- E ment of Record. *Keilw.* 12. *a. Poph.* 26, 27.

How to plead a Deed made to the King.

How to plead a Deed made to the King. *Keilw.* F 4 to 20.

How it is where the King's Grant may be taken to two Intents.

If the King's Grant may be taken by two Intents, G one of which may be good, the other not; it ſhall be conſtrued to ſuch Intent, that the Grant may take Effect. 5 *Mod.* 301.

Leaſes under the Exchequer-Seal, are good by the Courſe of the Exchequer.

Leaſes under the Exchequer-Seal are good and H available by the common Courſe of the Court of Exchequer, though not by the Common Law, unleſs under the Great Seal. 4 *Rep.* 16. *b.* 17. *a.*

What Forfeitures may be granted under the Exchequer-Seal.

A Leaſe of a Manor was forfeited to the King I upon an Attainder of Treaſon; this may be granted under the Exchequer-Seal; for it is but a diſpoſing of the Profits, and is always revocable, *Si quis plus dare voluerit:* So a Chattel-Leaſe is vendible for his beſt Profit. *Cro. Jac.* 109. *pl.* 6.

Where the Defendant muſt have his *Monſtrans de Droit*, or Petition *de Droit*, or what other Remedy.

How the Law ſtands in Caſe of the King, where K the Defendant muſt have his *Monſtrans de droit*, or Petition *de droit*, or what other Remedy. 4 *Rep.* 54. *b.* to 60. *a.*

Where a falſe Conſideration ſhall not avoid a King's Grant.

A falſe Conſideration material, if paſt, ſhall not L hurt the King's Grant: But if a future Conſideration be not performed, it will avoid it. *Hob.* 231. Where the Conſideration is void, the Grant is alſo void. 5 *Rep.* 94. *a.*

In real Conſiderations a falſe Conſideration ſhall avoid the King's Grant, but not in perſonal Conſiderations.

In all Caſes where the Conſiderations are real and M ſavour of the Land, or extend to ſuch a real Thing; if it be falſe, it deſtroys the Patent: But where the Conſideration is Perſonal, as in Conſideration of Money paid, or Service done, altho' it be falſe, yet the Patent may be good. 3 *Leon.* Caſe 337. *fol.* 248.

A **In** ſome Caſes a Perſonal Conſideration, if falſe, ſhall deſtroy a Patent if it be future; as if the King grants Lands to *J. S. ea intentione*, That he ſhall pay to *A. B.* 20 *l.* now, if he doth not pay it, the Patent is void, and the Eſtate given by it is void. 3 *Leon.* 248.

Where a falſe perſonal Conſideration ſhall avoid it.

B **A double** Uſurpation ſhall bind the King, ſo that he cannot have a *Quare impedit. Cro. Jac.* 53. *pl.* 26. See Title **Quare impedit:** But adjudged *contra. Cro. Jac.* 123.

A double Uſurpation ſhall bind the King.

C **If** the King hath Title to preſent by Lapſe or Outlawry, and doth not preſent in his Turn, he ſhall loſe it. *Cro. Jac.* 54.

Where the King doth not preſent in his Turn, he ſhall loſe it.

D **No** Eſtate-tail in the Crown is preſerved by the 34 *H.* 8. *cap.* 20. But the Eſtate-tail is created by Letters Patent, or of the Proviſion of the King. 2 *Rep.* 15. *b.*

What Eſtates-tail in the Crown cannot be barred by a Recovery. 34 **H. 8. cap. 20.**

E **The** Recital of an Eſtate-tail, or Leaſe for Life, or Years, in a Grant of the King, by the Words, *mentionatur fore concedi*, or *dimitti*, is a new, but very good Invention, to prevent the Reciting of the whole Grant. 8 *Rep.* 167.

A general Recital in a King's Grant, good.

F **In** all Caſes where a common Perſon is put to his Action, there, upon Office found, the King is put to his *Sci. fa.* But where a common Perſon may enter or ſeize, there the Office is ſufficient without a *Sci. fa.* 9 *Rep.* 96. Where a common Perſon is put to his Entry, the King is put to his Office. *Poph.* 27.

Where the King is put to his *Sci. fa.* and where not; and where to his Office, and where not.

G **The** King makes a Gift in Tail, and the Donee dies without Iſſue; the Land is in the King without Office. *Poph.* 27. So in every Caſe where the Eſtate is determined according to the Limitation. *Ibid.*

Where the Land is in the King without Office.

H **There** needs no Office where any Thing appears upon Record; for it is in vain to make any Thing appear upon Record by Office, which appears upon Record without it. *Poph.* 28.

There needs no Office where any Thing appears on Record.

I **A Subject's** Deed hath Relation only to the Time of the Delivery, and not to the Date: But the King's Grant to the Time of the Date only. 2 *Plow.* 491. *b.*

To what Time the King's Grant hath Relation.

K **Letters Patent** are good in theſe three Caſes. *viz.*

L 1ſt, **Where** no Warrant is made.

M 2dly, **Where** the Warrant is made and delivered, but no Day of the Delivery entered.

N 3dly, **Where** the Day is entered, and the Letters Patents bear Date after the Day. 2 *Plow.* 492. *b.*

Some Reſolutions upon the Stat. 18 **H.** 6. **cap. 1.** which make Patents void, and which vary from the Day of the Warrant entred in Chancery.

Where the King ſhall loſe his Title of Preſentment for Lapſe, and where not.

A **Where** a Title of Lapſe accrues to the King, and the Patron preſents, yet the King may preſent as long as the Preſentee is Parſon: But if the Preſentee dies, or reſigns, before the King hath preſented, then his Preſentation is loſt; provided the Reſignation is not by Covin to take away the King's Title. *Cro. Jac.* 216. *pl.* 2.

Of King's Grants.

B **Of** King's Grants, and of the Words *De gratia ſua ſpeciali, &c.* and of many other good Matters relating thereunto. See *The Caſe of Mines Royal.* 1 *Plow.* 313. *b.* to 340. *a.*

How the Words, *Ex certa ſcientia, &c.* ſhall be expounded. How it ſhall be without theſe Words, and how with them. How to be expounded where there is a falſe Recital.

C **Where** a Thing may be taken two Ways, there without the Words *ex certa ſcientia, &c.* the beſt ſhall be taken for the King, and the ſtrongeſt againſt the Patentee: But by the Words, *Ex certa ſcientia,* that Incertainty is ſaved, and ſhall be taken ſtrong for the Patentee; and if it can be any Ways taken for him, the Patent ſhall not be void. But where the King recites a Thing which is falſe, that ſhall not make the Patent good, tho' the Words are, *Ex certa ſcientia & mero motu.* 3 *Leon.* Caſe 69. *fol.* 49.

How a Patent ſhall be conſtrued without *Ex certa ſcientia.* How where thoſe Words are in it.

D **Where** the Words *Ex certa ſcientia* are not put into the Patent, it ſhall be intended to be made at the Suggeſtion of the Patentee, and ſo the Grant ſhall be taken beneficial for the King, and ſtrictly againſt the Patentee: But where ſuch Words are put in the Patent, there the Grant ſhall be taken beneficial for the Subject.

What *Ex ſpeciali gratia* means.

E **Theſe** Words *Ex ſpeciali gratia* imply the Bounty of the King.

What *Ex certa ſcientia.* What *Ex mero motu.*

F *Ex certa ſcientia* excludes all Ignorance, and *Ex mero motu* ſhews the liberal Benevolence of the King, without Suit of the Party. 3 *Leon.* 249.

A Diſcent is no Plea againſt the King.

G **Againſt** the King a Diſcent is no Plea. 2 *Leon.* Caſe 37.

What muſt be a good Inducement to a Traverſe againſt the King.

H **Nothing** can be an Inducement to a Traverſe, as well in the Caſe of a Subject as of the King, but ſuch a Thing as is traverſable. *Ibid.*

The King may maintain his own, or traverſe the Party's Title.

I **It** is at the Election of the King to maintain his own Title, or elſe to traverſe the Title of the Party. 2 *Leon.* Caſe 69. *fol.* 123.

Where a Common Perſon muſt enter, there muſt be an Office for the King.

K **Where** an Entry in the Caſe of a Common Perſon is neceſſary, there it is requiſite that there be an Office for the King. *Ibid. fol.* 124. See *Cro. El.* 855. *pl.* 19.

The King's Leaſe ſhall be void upon a Proviſo for Non-payment of Rent, without Office.

L **Where** the King leaſes for Years, rendering a Rent payable at the Receipt at *Weſtminſter*, and there is a Proviſo, That if the Rent be behind, the Leaſe ſhall be void; if the Rent be behind, the Leaſe ſhall be void without Offence. 2 *Leon.* Caſe 178.

A The King leaſes for Twenty-one Years by Patent, and the Leſſee was tied to repair the Houſe during the Term; this ſhall be conſtrued as a Covenant on the Leſſee's Part, to bind him and his Aſſigns. *Cro. Jac.* 240. *pl.* 5. 522.

Where the Leſſee takes by Patent, he conſents to all that is in it, and the Words for Repairs are as ſpoken by him.

B The King may grant a Debt forfeited by Outlawry, being a Choſe in Action; and the Grantee may have the Benefit to levy this Debt by Action in his own Name, or by Extent in the King's Name, tho' there are not any Words in his Grant to ſue in the King's Name, as is uſual. *Cro. Jac.* 180.

A Debt forfeited by Outlawry may be granted by the King, and the Grantee may ſue in his own or the King's Name for it.

C An *Audita Querela* lies not againſt the King. *Cro. Jac.* 481.

An *Audita Querela* lies not againſt the King.

D Where the Plaintiff ſays in his Declaration, That the King granted *Decimas præd.* altho' not by any of the Names in the Patent; yet where it ſaid *Decimas præd.* it is a ſufficient Allegation, that thoſe Tithes paſſed by the Patent; and if they did not, the Defendant might have ſaid, *Non conceſſit*. *Cro. Jac.* 979. *pl.* 17, 680.

Where the King grants Tithes not by any Name particularly, the Plaintiff in his Declaration may ſay, *Decimas præd.* and if they did not paſs, then he ſhould plead *Non Conceſſit*.

E How it is where Witneſſes are examin'd by Commiſſion from the Chancery, after the Demiſe *le Roy*, the Commiſſioners then not having any Notice thereof, and what ſhall be done afterwards in the Matter. See *Cro. Car.* 97. *pl.* 24. 98.

How it is where Witneſſes are examined after the Demiſe *le Roy*, the Commiſſioners not having Notice of the King's Death.

F Where the King lets for Years, reſerving a Rent payable at the *Exchequer*, with a Proviſo, to be void by the Non-payment of the Rent, the Payment, or Non-payment, appears by Record, and therefore to prove the Non-payment there needs no Office: But when Land is let by Leaſe, with ſuch Proviſo, payable to the Receiver, or his Deputy, the Payment muſt be made to the Receiver, or his Deputy, and that doth not appear upon Record, and therefore the Leaſe is not void by Non-payment without Office. *Cro. Car.* 99. *pl.* 25. 100.

Where a King's Leaſe is void by Non-payment of Rent. And where not void without Office found.

G Upon a Judgment in *Præmunire* that he ſhall forfeit, *&c.* nothing veſts in the King until Office found, and it ought to be an Office by Commiſſion under the Great Seal: For the Freehold being in the Party offending at the Time of the Attainder, ſhall not be diveſted from him, without an Office by Commiſſion under the Great Seal: For that is an Office which intitles the King; but a Commiſſion under the Exchequer Seal is only to inform the King, and put the Land in Charge. *Cro. Car.* 172. *pl.* 18.

Nothing veſts in the King upon a Judgment in a *Præmunire*, till Office found by Commiſſion under the Great Seal. Difference between a Commiſſion under the Great Seal, and a Commiſſion under the Exchequer Seal.

Where a Priſoner in Execution at the King's Suit for Debt may alſo be in Execution at a Subject's Suit.

25 Ed. 3. cap. 19.

H. being condemned, and in Execution for Debt to the King, was alſo condemned for Debt in *B. R.* and was brought into Court by *Habeas Corpus* to be charged; and held, That he ought not to be charged in Execution here 'till the King's Debt be ſatisfied: But becauſe he had not a Writ of Protection, the Court held, That he is out of the Statute of 25 *Ed.* 3. *cap.* 19. and awarded, that he ſhould be as well in Execution at the Suit of the Party as of the King. *Cro. Car.* 389. *pl.* 23. 390. A

Leaſes for Lives under the Exchequer-Seal, are good.

Leaſes for Life under the Exchequer-Seal of Lands uſually let, and at the ancient Rent, are good, and for the King's Benefit, that the Land ſhould not lie unlet. *Cro. Car.* 513. *pl.* 9. B

What are concealed Lands, and what not. Concealment, what.

Lands cannot be concealed after once revealed by any Words in a Record, unleſs they were given from the Crown, and afterwards came into it upon a new Title. For Concealment is when Lands are in the King by Attainder, or other Title, and there is not any Record to inform him what Lands they are. *Cro. Eliz.* 508. C

Strangers Cattle *Levant* and *Couchant* ſeized upon a *Lev. Fa.* upon an Outlawry.

The Cattle of a Stranger *Levant* and *Couchant* upon the Lands of an outlawed Perſon, may be taken and ſold, upon a *Levari Facias.* 5 *Mod.* 133, 114, 115, *&c.* D

By what Statutes Kings are bound, and why.

All Statutes made to ſuppreſs Wrongs, take away Fraud, or prevent the Decay of Religion, bind the King tho' not named: For Religion, Juſtice and Truth, are the ſure Supporters of Crowns and Diadems of Kings: 5 *Rep.* 14. *b.* See what particular Statutes are mentioned in that Caſe. E

All the diſſolved Monaſteries, *&c.* given to the King.

31 H. 8. cap. 13. Sect. 2.

The King ſhall hold to him, his Heirs and Succeſſors for ever, all the late diſſolved Monaſteries, Abbies, Priories, Nunneries, Colleges, Hoſpitals, Houſes of Friars, and other Religious Houſes and Places, with all Things belonging to them. *Sect.* 2. F

If before diſcharged of Tithes, ſhall ſo continue.

Such Abbey-Lands as before the Diſſolution were diſcharged of the Payment of Tithes, ſhall ſo continue diſcharged. *Sect.* 21. G

How Bonds ſhall be made to the King, and of what Quality they ſhall be, and to whom they ſhall go.

33 H. 8. cap. 39. Sect. 2.

Obligations made to the King ſhall be in the Nature of Statutes-ſtaple, and be made *Domino Regi,* and *ſolvendum Domino Regi hæredibus vel executuribus ſuis,* and be of the ſame Quality, Force and Effect; and alſo to be ſo executed, and ſhall remain to the Heirs or Succeſſors of the King according to his Appointment. *Sect.* 2. H

The King's Suits for his Debts to be in his own Name.

All Suits for the King's Debts ſhall be in his own Name. *Ibid. Sect.* 4. I

How Execution ſhall be.

Proceſs, Judgment and Execution for the King to be in the Nature of the Statute-ſtaple. *Ibid. Sect.* 5. K

Shall recover his Debt and Damages.

The King ſhall in all Suits for Debt, recover his Debt and Damages. *Ibid. Sect.* 6. L

A **The** King's Debtor dying, the King ſhall be firſt paid. *Magna Charta, cap.* 18.

The King ſhall be firſt paid.

B **A Leaſe** was made by the Queen paying a Rent, Proviſo, That upon Non-payment within forty Days the Leaſe to be void; the Rent was not paid within the forty Days: Afterwards the Receiver receives the Rent, and gives an Acquittance as if paid within the forty Days. This Leaſe was void immediately upon Non-payment, without Office joined. *Cro. Eliz.* 220. *pl.* 10. 221.

A Leaſe made by the Queen for Years, Proviſo if not paid by the Day, the Leaſe to be void: It's void by Non-payment without Office.

C **Where** a Remainder is limited to the King upon a Covenant to ſtand ſeized, no Uſe will ariſe for want of a Conſideration. *Moore*, Caſe 344.

An Uſe will not ariſe to the King upon a Covenant to ſtand ſeized; and why.

D **The** King may incorporate a Town, and enable them to chuſe Burgeſſes of Parliament. So alſo he may enable a Town not corporate. *Hob.* 14, 15.

The King may make and enable a Town to chuſe Burgeſſes of Parliament.

E **It** is lawful for any Subject to petition the King for Redreſs in an humble and modeſt Manner, where he finds himſelf grieved by a Sentence or Judgment. *Hob.* 220.

A Subject may petition the King in an humble Manner where he is grieved by any Sentence or Judgment.

F **The** King ſhall have Advantage of all Statutes made for the Benefit of the Subject. 1 *Leon.* 150.

Of what Statutes the King ſhall have the Advantage.

G **Always** where the Title of the King and the Title of a Subject concurs, the King ſhall have the Preference. 3 *Leon. fol.* 251.

The King's Title ſhall be preferred before a Subject's.

H **Where** there is a Leaſe in Being, and the King grants a ſecond Leaſe, if the Leaſe in Being is not recited in the ſecond Grant, it is void. 3 *Leon. fol.* 251.

A ſecond Leaſe muſt recite the firſt, or elſe it's void.

I **The** King cannot preſcribe for Tithes as Parcel of a Manor, but he may preſcribe to have *Decimam partem granorum*. *Cro. Eliz.* 293. *pl.* 7.

The King cannot have Tithes as Parcel of a Manor; but may preſcribe for *Decimam partem granorum*.

K **The** King may grant that another may ſue in his Name. *Cro. Eliz.* 325. *pl.* 1. *Cro. Jac.* 180.

May grant that a Man may ſue in his Name.

L **A Concealment** is not but where Lands are in the King by Attainder, or otherwiſe, and there is not any Record to inform him what they are. *Cro. Eliz.* 508.

Concealment, what it is.

M **The** Queen cannot be intitled to a Forfeiture upon a Leaſe for Life, unleſs it be by Office found in the proper County: But ſhe may upon a Leaſe for Years, by Office found in any County. *Cro. Eliz.* 855. *pl.* 19.

Where the Office muſt be found to deſtroy a Leaſe for Life. And where a Leaſe for Years.

N **For** King's Grants. See *Moore*, Caſe 349.

King's Grants.

O **Where** both Titles commence at one Time, the King ſhall have the Preference. Dame *Hale*'s Caſe. 1 *Plow.* 263. *b.*

Where the King ſhall have the Preference.

The King may make a Guild: He cannot impoſe a Fine by Patent.

A **The** King may make *Guildam mercatoriam* for the Increaſe of Trade; but no Forfeiture can be impoſed upon a Subject by Patent. 8 *Rep.* 125. *a.*

The King may make a Borough by Charter.

B **The** King may make a Borough by Charter, and grant them Liberties, and make them free Burgeſſes. *Co.* 10 *Rep.* 30. *b.* *Dan. Abr.* 744.

Where the King's Grant is void, and where good.

C **If** the Thing granted be of ſuch a Nature, that divers Eſtates may be limited thereof, as of Lands, Rents, *&c.* If the King in his Grant of ſuch Thing doth not limit any Eſtate to the Grantee, *viz.* for Life, for Years, or in Fee, *&c.* nothing paſſes by this Grant, but it is void for Incertainty: But if the Thing granted were ſuch, whereof divers Eſtates could not be limited, there the King's Grant cannot be uncertain, nor the King cannot be deceived. *Dav. Rep.* 45. *a.*

What ſhall paſs by general Words, and what not.

D **General** Words in a King's Grant ſhall not paſs ſuch ſpecial Royalties as belong to the Crown by Prerogative; as Mines-Royal, Piſcary-Royal, Amercements and Eſcheats; for theſe do not paſs by the general Words of all Mines, Piſcaries, Amercements and Eſcheats. *Dav. Rep.* 57. *b.*

Nothing paſſes by Implication in the King's Grant.

E **Where** the King grants all the Territory adjoining to a River, and all Fiſheries within that Territory, except three Parts of the Fiſhery of the River *B.* That the fourth Part of this Fiſhery doth not paſs by this Grant; for the King's Grant cannot paſs any Thing by Implication. *Dav. Rep.* 57. *b.*

The King may take Iſſue, and afterwards demur; or demur, and take Iſſue after it.

F **The** King may take Iſſue, and afterwards demur; or firſt demur, and afterwards take Iſſue; or he may vary his Declaration: But all muſt be done in one Term. *Vaugh.* 65.

Service of a Subject.

G **The** King has a Right to the Service of his Subject. *Salk.* 168.

Can't hinder him of a Right.

H **The** King can't diſcharge the Right of a Subject, or hinder him of a Remedy the Law gives him. *Ibid.* 19.

Canons.

I **The** Kings of *England* have not the ſole Legiſlative Power; and if the King and Clergy make a Canon it does not bind Laymen without their Aſſent. *Ibid.* 412.

Embargo.

K **The** King can lay an Embargo *pro bono publico* only. *Ibid.* 32.

Annuity.

L **He** can't grant an Annuity ſo as to charge his Perſon, but may charge his Revenues as the Exciſe, *&c.* *Ibid.* 58.

Superſtitious and Charitable Uſes.

M **He** can't take Benefit of a Deviſe to ſuperſtitious Uſes, but ſhall apply it to a Charitable Uſe. *Ibid.* 163.

Falſe Recitals.

N **In** Grants by him where it appears he intends to paſs the Thing, it ſhall paſs notwithſtanding falſe Recitals. *Ibid.* 561.

A **He** need not bring a *Scire Facias* to revive a Judgment after the Year. *Salk.* 603.

Scire Facias.

B **He** can't pardon Murder, except it be by expreſs Words. *Ibid.* 499.

Murder, how pardoned.

C **He** may pardon a Diſability where it is only the Conſequence of a Judgment, *aliter* where Part of the Judgment. *Ibid.* 689.

Pardon.

D **He** may create an *Iriſh* Peer under the Grant of *England* by expreſs Words. *Ibid.* 510.

Iriſh Peer.

E **After** Inſtitution and Induction a Preſentation by the King is void, tho' it be *ad corroborandum*, *&c.* *Ibid.* 162.

Preſentation, where void.

F **The** King's Chaplain Extraordinary is not capable of a Plurality. *Ibid.* 161.

Plurality.

G **And** ſee touching the King's Chaplains Ordinary and Extraordinary. *Ibid.* 161, 162.

The King's Chaplains.

H **In** a *Quare Impedit* Plenarty is no Plea to the King's Right. *Mod. Ca. in Law and Equity*, 8.

Plenarty.

I **The** King cannot exempt in any Caſe where the Subject has an Intereſt, *&c.* *Ibid.* 19.

Exemption.

K **The** King cannot be diveſted of any of his Prerogatives by the general Words of an Act of Parliament. *Ibid.* 6, 8.

Act of Parliament.

L **In** other Caſes (*i. e.* not of Prerogative) the King's Rights are more favoured than thoſe of a Subject. *Ibid.* 8, 105.

The King's Rights favour'd.

M **Where** an Ordinary may viſit a College, *&c.* tho' of the King's Foundation. *Ibid.* 183, 184, *&c.* 367.

Viſitation.

N **The** King ſeiſed of the Advowſon of a Vicarage, and the Biſhop of the Advowſon of a Rectory near it; the King's Incumbent dying, the Biſhop united the Livings; the King preſents another Vicar, and, on the Biſhop's refuſing him, brings a *Quare Imped.* againſt the Biſhop, and Judgment *pro Rege*. *Ibid.* 6, 7, 8.

Quare Impedit.

O **The** King cannot pardon or releaſe any Rights of the Subject that are once veſted. *Ibid.* 105.

Pardon and Releaſe.

P **Nor** will his Act of General Pardon releaſe any Duty given to the Subject on a penal Statute. *Ibid.* 104, 105.

Pardon.

Q **And** it ſeems he can't pardon Burning in the Hand, *&c.* upon an Appeal, (*Co.* 5 *Rep.* 50. *contra*, deny'd.) *Ibid.* 105.

Pardon.

R **See** alſo the King's Power of Releaſing or Diſpenſing with Penalties. *Ibid.* 12 to 19.

Penalties.

S *Quære*, If the King's Charters to the College of Phyſicians can exempt them from the Militia Service. *Ibid.*

Exemption from Militia Service.

What

The like.

A **What** Power the King has to grant Charters of Exemptions from publick Services or Penalties of Statutes. *Mod. Ca. in Law and Equity*, 12 to 19.

Pardon.

B **Of** his Prerogative to pardon Offences. 3 *Salk.* 265.

Fines.

C **Fines** for Offences belong to him, and the Reaſon why. *Ibid.*

Lagan, See **Wreck.**

Lapſe.

Lapſe, what.

D **LAPSE is the Omiſſion of a Patron to preſent to a Church within ſix Months after it becomes void; by which Neglect, a Title is given to the Ordinary to collate to the Church. This Lapſe happens as well the Patron being ignorant as privy, except only by the Reſignation of the former Incumbent, or Deprivation, upon any Cauſe comprehended in the Statute of** 13 Eliz. cap. 12.

13 Eliz. cap. 12.

Where there ſhall not be a Lapſe without Notice.

E **One** under the Age of 23 Years is preſented to a Benefice. Here Notice muſt be given to the Patron, otherwiſe Lapſe ſhall not incur, *March* 119. See the Statute of 13 *Eliz. cap.* 12.

How the Computation of the ſix Months ſhall be in the Caſe of a Lapſe.

F **In** the Computation of ſix Months in the Caſe of a Lapſe, the Reckoning ought to be according to the Kalendar *January*, *February*, *&c. Cro. Jac.* 141. *pl.* 17. But 166. *pl.* 6. *&* 167. Adjudged that it ſhall be 182 Days. See 6 *Rep.* 62. *& primo Joban. &c.* 1220, 1221.

Where the Biſhop, Archbiſhop, and King muſt collate.

G **If** the Patron doth not preſent in ſix Months, the Ordinary hath ſix Months to collate; and if he doth not collate in the ſix Months, then the Metropolitan hath ſix Months; and if he doth not collate within ſix Months, then it devolves to the Crown. 2 *Roll. Abr.* 368. *b.* 2, 3, 5. *Hob.* 30.

The firſt Benefice void without Sentence.

21 H. 8.

He may preſent.

H **By** the Common Law, the firſt Benefice was void before the Statute of 21 *H.* 8. without Sentence declaratory, at the Election of the Patron; ſo that if he will, he may preſent without Notice; and if he will not preſent, no Lapſe ſhall incur. *Moore*, Caſe 719.

Latin.

A ALL under this Head relating to the Proceedings in *Latin*, ſtands now for nothing more than to ſhew what the Law was in the Days of our Anceſtors for a great Number of Ages; but our preſent Legiſlators have paſs'd an Act in 4 *Geo.* 2. (reciting, that it is to protect the Lives and Fortunes of the Subjects, *&c.*) By which it is Enacted, That after the 25th of *March* 1733, all Writs, Proceſs and Returns thereof, and Proceedings thereon; and all Pleadings, Rules, Orders, Indictments, Informations, Inquiſitions, Preſentments, Verdicts, Prohibitions, Certificates; and all Patents, Charters, Pardons, Commiſſions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereto; and all Proceedings of Courts-Leet, Courts-Baron and Cuſtomary-Courts, and all Copies thereof; and all Proceedings whatſoever in any Courts of Juſtice within that Part of *Great Britain* call'd *England*, and in the Court of Exchequer in *Scotland*, ſhall be in the *Engliſh* Tongue and Language only, and not in *Latin* and *French*, or in any other Language; and ſhall be written in ſuch a Character as the Acts of Parliament are uſually ingroſſed in; and the Lines and Words to be written at leaſt as cloſe as the ſaid Acts uſually are, and not in Court-Hand; and in Words at length, and not abbreviated; and any Perſon offending againſt this Act, ſhall for every Offence forfeit 5 *l.* to the Perſon who ſhall ſue for the ſame, in any of the Courts of Record in *Weſtminſter-Hall*, or Court of Exchequer in *Scotland*.

B **Miſtranſlation**, Variation in Form by Reaſon of Tranſlation, Miſpelling or Miſtakes in Clerkſhip, or Pleadings or Proceedings begun or to be begun before the 25th of *March* 1733, being Part in *Latin* and Part in *Engliſh*, ſhall be no Error, or make void any Proceedings; but all Manner of Miſtranſlation, Errors in Form, Miſpelling, Miſtakes in Clerkſhip may be amended, whether in Paper or in Record, or otherwiſe, before or after Judgment, upon Payment of reaſonable Coſts.

C **This** Act is not to extend to the certifying beyond the Seas, any Caſe or Proceedings in the Court of Admiralty, but in ſuch Caſes the Commiſſions and Proceedings may be certified in *Latin* as formerly.

D **All** Statutes for amending Delays ariſing from any Jeofails whatſoever, ſhall extend to all Forms and Proceedings in Courts of Juſtice (except in Criminal Caſes) when the Forms and Proceedings are in

Engliſh; and all Errors or Miſtakes which might be amended by any Statute of Jeofails, if the Proceedings had been in *Latin*, are hereby declared to be amended by the Statutes now in Force, for the Amendment of any Jeofails when the Proceedings ſhall be in the *Engliſh* Language: And this Clauſe ſhall be taken in all Courts of Juſtice, in the moſt beneficial Manner for the Eaſe of the Parties, and ſo as may beſt prevent frivolous and vexatious Delays.

And having obſerved ſome ill Conſequences from it in ſo ſhort a Time, they have now added the following Clauſe in an Act of the ſixth of King *Geo.* II. to explain and amend, *&c.* Be it further enacted, *&c.* That all Writs, *&c.* and all Copies thereof, and all Proceedings whatſoever in any Courts of Juſtice within *England*, *Wales*, *&c.* and in the Court of Exchequer of *Scotland*, and which concern the Law and Adminiſtration of Juſtice, may from and after the 25th Day of *March* 1733, be Written or Printed in a common legible Hand and Character, and with the like Way of Writing or Printing, and with the like Manner of expreſſing Numbers by Figures as have been heretofore, or are now commonly uſed in the ſaid Courts reſpectively, and with ſuch Abbrevations as are now commonly uſed in the *Engliſh* Language; and that no Penalty or Puniſhment ſhall be incurr'd by Virtue of the ſaid recited Act for any other Offence than for Writing or Printing any of the Proceedings or other the Matters and Things abovementioned, in any Hand commonly called Court-Hand, or in any Language except the *Engliſh* Language; nor ſhall any ſuch Penalty or Puniſhment be extended to the expreſſing the proper or known Names of Writs or other Proceſs or Technical Words in the ſame Language as hath been commonly uſed, ſo as the ſame be Written or Printed in a common legible Hand and Character, and not in any Hand commonly call'd Court-Hand; and that all Proſecutions for Offences againſt the ſaid Act, ſhall be commenced within three Months after the ſame ſhall be committed; and that the ſeveral Officers in the ſeveral Offices of the King's and the Lord Treaſurer's Remembrancer, and in the Offices of the Clerk of the Pipe, and the Clerk of Eſtreats in his Majeſty's Courts of Exchequer, ſhall and may write and ſend out in Proceſs for his Majeſty's Service, Rolls or Schedules of all ſuch Debts as have been forfeited and became due and owing to his ſaid Majeſty before the ſaid 25th of *March* 1733, in the ſame Manner they uſed to do, provided the Writ or Proceſs to be annexed to the ſaid Rolls or Schedules ſhall be in the *Engliſh* Tongue, and in a common legible Hand, and according to the Direction of the ſaid recited Act, any Thing in the ſaid Act made in the fourth Year of his preſent Majeſty's Reign, or any other Law or Statute to the contrary thereof in any wiſe notwithſtanding.

A **Words** which paſs under the Name of *Latin*, are of four Sorts, and what are good within the Statute of 36 *Ed.* 3. *cap.* 15. are,

The four Sorts of Words which paſs under the Name of *Latin*, and what are within 36 Ed. 3. cap. 15.

B I. **Good** *Latin*, allowed by Grammarians.

Good *Latin*.

C II. **Words** ſignificant, and known to the Sages of the Law; but not allowed by Grammarians, nor having any Countenance of *Latin*.

Lawyers *Latin*.

D **In** what Caſes *Mala Grammatica*, falſe *Latin*, or no *Latin*, and having Countenance of *Latin*, ſhall abate or deſtroy a Writ, or not.

Falſe *Latin*.

E **Words** inſenſible and of no Signification, and which have not any Countenance of *Latin*, ſhall be rejected. 10 *Rep.* 133.

Inſenſible, and of no Signification.

F **The** firſt Sort is within the Statute of 36 *Ed.* 3.

36 Ed. 3. cap. 15.

G **The** ſecond Sort, *viz. Meſuagium, Toftum, Bruera, &c.* are Words allowed in Pleadings and original Writs, and are within the Statute.

Words allowed in Pleadings.

H **The** third Sort, falſe or incongruous *Latin*, ſhall abate original Writs; but ſhall not make void any judicial Writ, Plea, or Declaration, nor any Grant or Deed. **Alſo**, When there is no *Latin* Word, yet if you make a Word which hath ſome Countenance of *Latin*, and an *Anglice* to it, it is good.

Words that ſhall abate original, not judicial Writs.

I **The** fourth Sort are Words inſenſible: And for Words inſenſible, and of no Signification, Damages cannot be given. 10 *Rep.* 133. *a. b.*

Inſenſible Words.

K **Where** there is no *Latin* for Words, there where Words of no Signification are put to expreſs them, they ought to be explained by an *Anglice*: But where they are ſignificant, there needs not any *Anglice*. *March* 16.

Where an *Anglice* is requiſite, and where not,

L **Where** Words are explained by an *Anglice*, contrary to the true Intent and Meaning of the Word itſelf, the *Anglice* is void. *Ibid.*

Where the *Anglice* is void.

M **Falſe Latin** ſhall not hurt a Bond, *&c. Cro. Jac.* 261. *pl.* 22.

Falſe *Latin* ſhall not avoid a Bond.

N **Indictments** are to be in *Latin*. *Comberb.* 212.

Indictments.

O **Yet** a Conviction by Juſtices of the Peace may be in *Engliſh*. *Ibid.* 289, 297.

Conviction.

Latitat.

A *Latitat*, what.

A Latitat is a Teſtatum Writ, iſſuing out of the Court of King's Bench, grounded upon a Bill of Middleſex, ſuppoſed to be ſued out before, and returned Non eſt inventus. A

When the Proceſs in *B. R.* muſt be by *Latitat*, and when by Bill.

In the Caſe of *Abbot* againſt *Camby*. *Hill.* 1656. *B. S.* It was ſaid by the Court, That a *Latitat* cannot iſſue out of this Court into the County of *Middleſex*, except the Court removes out of *Middleſex*; for if the Court removes out of *Middleſex*, then the Proceſs muſt be a *Latitat*; and in the County where the Court is, the Proceſs muſt be by Bill, as it was in *Middleſex* before the Court removed. B

The Nature of it and its Antiquity.

A *Latitat* out of this Court is in the Nature of an Original Writ, called a *Clauſum fregit*; returnable in the Common Pleas out of the Chancery, upon which they proceed in the Common Pleas. *Mich.* 1649. B. *S.* And is of Antiquity beyond the Memory of Man. C

Ac etiam Billæ.
13 Car. 2. c. 2. ſeſſ. 2.

See the Statute of the ſecond Seſſion of 13 *Car.* 2. *cap.* 2. which was the Foundation of the *Ac etiam Billæ* in Writs, whereby to hold to ſpecial Bail. D

The Time of iſſuing of it out, is traverſable.

The Time when a *Latitat* iſſued out, is traverſable. 2 *Keble* 198. *pl.* 25. E

Whether a *Latitat* a good Commencement.

Quære, If it be a good Commencement of a Suit within the Year, on a penal Statute. *Comberb.* 4. 195. F

Voluntary Appearance.

On a voluntary Appearance the *Latitat* to be ſued out in a Fortnight. *Ibid.* 244. G

A *Latitat* bars the Statute of Limitations.

Latitat ſued forth within a Year is a ſufficient Commencement of the Suit, ſave the Limitation of Time, *&c.* *Carthew* 233. H

Latitat.
Statute of *Limitations.*

How to ſue out, return, and enter a *Latitat*, to ſave the Statute of Limitations. See Title Actions, *fol.* 27. *Letters* A. B. I

Law.

See Wager of Law.

What the Law is.

A THE Law is rectum, becauſe it diſcovers that which is crooked or wrong; for as Right ſignifies Law, ſo crooked or wrong ſignifies Injury, and Injuria is contra jus.

B It is alſo called Right, becauſe it is the beſt Birth-right the Subject hath to his Lands, Goods, Wife, Children, Body, Life, Hanour and Eſtimation, and protects him from Injury and Wrong. See 2 Inſt. 56.

The ſeveral Qualities which the Law muſt have.

The Law muſt have three Qualities.

C 1. It muſt be *Juſta.*
2. *Jubens honeſta.*
3. *Prohibens contraria.*

And if it be *Juſta*, it muſt have five Properties.

D 1. *Poſſibilis.*
2. *Neceſſaria.*
3. *Conveniens.*
4. *Manifeſta.*
5. *Nullo privato commodo, vel communi utilitate edita.* 2 Inſt. 587.

Of the Juſtice of the Law.

E In our Law, and all other Laws, there are ſome Things which happen, which by Foreſight cannot be prevented, nor by Diligence avoided; and when ſuch Things happen to a Man, the Law will not puniſh him for it; for the Law puniſheth no Man, but for his own Default. 1 *Plow. Com.* 9. *b.*

Where the Law of Reaſon interpoſes.

F When Laws and Statutes are made, there are ſome Things exempted and foreprized out of the Proviſion thereof by the Law of Reaſon, although not expreſſed by Words. 1 *Plow.* 13. *b.*

What makes a Breach of the Law.

G The breaking of the Words of the Law, is no Breach of the Law, if the Intent thereof be not broken. 1 *Plow.* 19. *b.*

Where the Law doth not puniſh.

Where the Words of any Law are broken, to avoid a greater Inconvenience, either for Neceſſity or Compulſion, or involuntary Ignorance: In theſe Caſes, the Law doth not puniſh. A

Of Religion and Government.

On the Conqueſt of a Heathen Country the Laws of Religion ceaſe, but not the Laws of Government. *Comberb.* 228, 229. B

The Diviſion of Laws. 3 *Salk.* 112. C

Common Law.

The Laws in general, and of the Common Law. *Ibid.* 222. D

Of Countries found out by us.

Where an uninhabited Country is found out and planted, all Laws in Force here, are immediately ſo there. *Salk.* 411. E

Of Countries conquer'd.

But where an inhabited Country is found and conquered, not ſo till declared by the Conqueror. *Salk.* 411, 412, 666. F

Canons.

No Canons oblige the Laity without Conſent of the Civil Legiſlature. *Ibid.* 412. G

Iſlands, how govern'd.

The Iſlands *Guernſey*, *Jerſey*, *Sarke*, *&c.* are governed by the Laws of *Normandy*, *Ibid.* 404. H

Where the Laws of *England* extend not.

The Laws of *England* do not extend to *Virginia*, *&c.* being conquered Countries. *Ibid.* 411, 666. I

Foreign Laws, how tried.

Where an Iſſue depends on a foreign Law, it may be tried in the next County, and ſuch Laws may be given in Evidence. *Ibid.* 651. K

Temporal Matters incident to Spiritual.

A Temporal Matter incident to a Spiritual Juriſdiction, muſt be tried according to the Rule of the Common Law. *Ibid.* 547. L

Hypothecations.

See the Difference between the Maritime Law and Common Law as to the Hypothecations. *Ibid.* 34. M

Lex Mercatoria.

And of *Lex Mercatoria*, *vide* Bills of **Exchange**. *Ibid.* 443, 125. N

Lex Parliamenti.

Of *Lex Parliamenti*. *Vide Salk.* 512. O

4 **Leaſe,**

Leaſe, Leſſor and Leſſee.

See Attachment. Death. Diſtreſs for Rent. King. Rent. Waſte.

A **Leaſes are Grants or Demiſes by one who hath any Eſtate in any Hereditaments, of thoſe Hereditaments to another for a leſſer Time, and may be for Life, or Years, or at Will: But if they were for Life, at Common Law there muſt have been Livery of Seiſin.**

Leaſes, what.

B **In** every Leaſe there are three Principals, The Leſſor, Leſſee, and Thing let; and by the Premiſſes, the Leſſor and Leſſee are expreſſed; and by the *Habendum,* the Intereſt which the Leſſee ſhall have, ought to be ſet forth; and if no *Habendum* in the Leaſe, then the Leſſee ſhall be Tenant at Will. 3 *Leon.* Caſe 60.

The three Principal Things in a Leaſe for Years.

C **In** a Leaſe for Years by Indenture, the Term is not certain before the *Habendum & Tenendum* in the Leaſe: *Term. Trin.* 24 *Car. B. R.* For though it do appear before *Habendum & Tenendum,* that the Lands in the Leaſe mentioned are demiſed unto the Leſſee; yet it doth not appear for how many Years they are demiſed, nor when the Leaſe is to begin, nor when to end, until it is declared in the *Habendum.*

The *Habend.* aſcertains the Leaſe.

D **The** beſt Conſtruction ſhall be for the Leſſee againſt the Leſſor. 6 *Rep.* 36. *a.*

The beſt Conſtruction for the Leſſee.

E **The** Day of the Delivery of a Leaſe ſhall be taken to be incluſive, and the ſame Day is Parcel of the Demiſe: So it is, if it be to commence from the Making.

Where the Day is incluſive.

F **But** if it be to hold from the Day of the Making, or the Day of the Date, there the Day itſelf is excluded. 5 *Rep.* 2. *b.*

Where excluſive.

G **A Leaſe** is dated *May* 20, to hold for twenty Years from the Date, or from the Day of the Date; it ſhall begin the 21ſt of *May.*

When Leaſes or Deeds to commence.

A **So** if the Leaſe bears Date the 20th of *May* to hold from the Making, or from henceforth; it ſhall begin on the Day on which it was delivered. *Co. Lit.* 46. *b.* 5 *Rep.* 1. *a. b.*

A Prebendary's Leaſe *a Datu.*

B **A Prebendary** makes a Leaſe for Life, *Habendum a Datu*, and whether it was all one as if it had been *a Die Datus?* And at the laſt adjudged to be a good Leaſe. 3 *Lev.* 438, 439.

A Leaſe to commence at the Expiration of a miſrecited Leaſe, commences preſently.

C **A Leaſe** for Years to commence at the Determination of a former Leaſe, and the former was miſrecited; it ſhall commence from the Sealing, and the Rent ſhall go on from thence. 1 *Lev.* 334.

A Leaſe for Life to commence *in futuro*, is void.

D **A Leaſe** for Life to commence *in futuro* is void, becauſe Livery cannot be made to a future Eſtate. 5 *Rep.* 94. *b.*

But where Livery is made by the Leſſor after the Day, it is good: But not where made by Attorney.

E **But** where a Leaſe is made for Life, *Habendum* at a Day to come, and after the Day the Leſſor makes Livery, there it ſhall be good: But if it be by Letter of Attorney, it is void. *Hob.* 314. 2 *Rep.* 55. *Roll. Abr.* 828. *Palm.* 29. *Daliſ.* 111. *pl.* 3.

A Leaſe for Life, *Habendum a Die datus*, and Livery by Attorney afterwards, is void.

F **A Leaſe** is made for Life, *Habendum a Die datus*, and Livery made by Attorney a Year afterwards; this is void: Becauſe it is *Habendum a Die datus*, and the Livery made ſo long time after will not help it. *Cro. Eliz.* 873. *pl.* 12. 874. 585. *pl.* 15.

A Reverſion granted, *Habendum* after *Michaelmas*, and the Attornment after *Michaelmas* is void, and why. So if the Attornment had been made preſently. But otherwiſe in Caſe of a Grant of a Reverſion, *Habendum* after the Death of Tenant for Life.

G **So** when a Reverſion was granted, *Habendum* after *Michaelmas*, and the Attornment is after *Michaelmas*, it is void: Becauſe if it were good, the Leſſor would have a particular Eſtate in the mean time, which cannot be. So alſo it had been, if the Attornment had been made preſently: But if a Reverſion be granted, *Habendum* after the Death of the Tenant for Life, it is good; for it is but a Limitation when he ſhall have the Poſſeſſion. *Cro. Eliz.* 585. *pl.* 15.

H. leaſes for Life, to begin after three Lives.

H *H.* leaſes for three Lives, and afterwards lets to *J.* for his Life, which Term to begin after, &c. and Livery was made: And adjudg'd a good Leaſe; and the Words *to commence after his Death* were rejected; ſo it begun preſently. *Cro. Eliz.* 269. *pl.* 8.

Rendering Rent at *Michaelmas* and *Lady-day*, inſtead of *Lady-day* and *Michaelmas*.

I **A Leaſe** was made in *January*, rendring Rent annually at *Michaelmas* and *Lady-day*; it ſhall be tranſpoſed to *Lady-day* and *Michaelmas*. 5 *Rep.* 112. *a.*

Where there is a Clauſe in a Leaſe, That if the Rent be behind, the Leaſe to be void; how it muſt be avoided.

K **Where** there is a Clauſe in a Leaſe, That if the Rent be behind ſuch a Day, &c. the Leaſe ſhall be void: Now if there was a Demand made at the Day and the Rent not paid, this Leaſe is not abſolutely void, till an actual Entry. It is only voidable; and Acceptance of the Rent before any Entry made, ſhall make that which was a voidable Leaſe a good Leaſe.

A **But** if the Words be, *That the Term ſhall ceaſe*, there, upon the Breach, the Term is immediately gone without Entry. *Per Catlin*, Ch. Juſt. *Daliſ.* 114, 115. *Cro. Eliz.* 221. For it ends by the Limitation.

Where the Clauſe is, *That the Term ſhall ceaſe*, how to be.

B **Debt** for Rent upon a Leaſe for Years, the Defendant pleads a Condition in the Leaſe to be void upon Non-payment of the Rent, and that he hath not paid it; but adjudged not to be void, without a Demand and Re-entry; ſo that it is at the Election of the Leſſor, or his Heirs, to continue or avoid the Leaſe. *Hob.* 331.

Debt for Rent, Defendant pleads a Condition to be void for Non-payment, and that he did not pay it.

C **A Leaſe** to commence at *Michaelmas*, the Leſſee enters before *Michaelmas*, and continues the Poſſeſſion afterwards; it is a Diſſeiſin. 1 *Lev.* 46.

Leſſee enters before his Term begins, he is a Diſſeiſor.

D **Leſſee** for Years in Poſſeſſion leaſes at Will, the Tenant at Will dies, the Leſſee may maintain Treſpaſs before Entry: For by the Death of the Tenant at Will, the Tenancy at Will was determined, and the Eſtate reveſted in the Leſſee to maintain Treſpaſs before Re-entry, by Reaſon of the Poſſeſſion which the Law caſts upon him. 1 *Lev.* 202.

Leſſee leaſes at Will, his Tenant dies, the Leſſee may bring Treſpaſs before Entry.

E **A Man** takes a Leaſe at Will and dies, this Eſtate is determined; and here the Executor of the Tenant at Will becomes Tenant at Sufferance, and the Heir cannot bring Treſpaſs till his Entry: But if the Tenant at Will commits a voluntary Treſpaſs, by pulling down of Houſes, cutting of Trees, *&c.* Treſpaſs lies without Entry; becauſe the Tenant hath by his own tortious Act determined his Tenancy at Will; which is *Littleton*'s Caſe.

Tenant at Will dies, and his Executor becomes Tenant at Sufferance.

Treſpaſs without Entry lies againſt Tenant at Will, for voluntary Treſpaſs.

F **So** if Leſſee at Will dies, and his Heir enters, the Leſſor may bring Treſpaſs againſt him, without Entry. *Cart.* 66, 67. *Litt. Sect.* 82.

Leſſor may bring Treſpaſs againſt the Heir of Tenant at Will.

G **Tenant** at Sufferance is he who firſt came in by a lawful Demiſe, and after his Eſtate ended, continuing the Poſſeſſion, holdeth over. *Co. Lit.* 57. *b.* But if he makes a Leaſe for Years, this is a Diſſeiſin, and turns the Eſtate to a Right. *Carter* 162. See Title **Tenant at Sufferance.**

Who is Tenant at Sufferance.

H **If** Tenant at Sufferance ſows the Land, and the Party who hath the Right enters before Severance of the Corn, he ſhall take the Corn with his Land as he finds it, it being the Folly of him who ſowed without a Title: *Co. Litt.* 57. *b.* Until the Entry the Right remains in the Tenant, who came in by a legal Title, and hath the Poſſeſſion: So that the Owner of the Land hath no Remedy for the Corn, nor can bring Treſpaſs until an actual Entry.

He who hath Right to enter ſhall take the Corn from the Tenant at Sufferance.

I **Tenant** for Life leaſes his Lands, the Leſſee ſows Corn upon it, and then the Tenant dies; the Right to the Corn remains ſtill to the Leſſee, and he ſhall have it. 5 *Rep.* 85. *a.*

Leſſee of Tenant for Life ſhall have the Corn he ſows, though Tenant for Life dies.

A Feme Copyholder, *durante viduitate*, ſows the Land, and marries, the Lord ſhall have the Corn.

A **A Feme** Copyholder, *durante viduitate*, ſows the Land and takes Huſband; the Lord ſhall have the Corn, and not the Huſband; becauſe the Eſtate determined by her own Act, *viz.* taking of the Huſband. 5 *Rep.* 116. *a.*

Tenant at Will ſows.

B **A Leaſe** of Land at Will, Leſſor ſows the Land, and the Will is determined by the Leſſor, the Leſſee ſhall have the Corn. *Ibid.*

A Leaſe only voidable muſt be made void by Re-entry; but if a Leaſe be void, there needs no Re-entry.

C **A Leaſe** which is only voidable, and not abſolutely void, muſt be made void by the Leſſor's Re-entry; but if a Leaſe be abſolutely void, there needeth no Re-entry: 21 *Car. B. R.* That is ſaid voidable which may be made void, if the Leſſor will, and may be continued, if he pleaſe, at his Election; the Leaſe is made void by Re-entry, and putting out the Leſſee, or elſe it is continued or affirmed by receiving the Rent, and thereby acknowledging him ſtill for his Tenant.

If a Man take a Leaſe of a ruinous Houſe, and covenant to leave it in Repair, an Action lies againſt him if he do not.

D **If** one take a Leaſe by Indenture for Years of a ruinous Houſe, that wanteth Reparations, and do covenant in the Leaſe to leave the Houſe at the End of the Term in good Repair, he is bound to do it; and an Action of Covenant doth lie for the Leſſor, againſt him, if he do it not. 21 *Car. B. R.* But if he had not covenanted expreſly to do it, he had not been bound by Law to do it; for the Law binds not the Leſſee to leave the Thing let, in better Condition than it was when it was firſt let unto him, except he bind himſelf by an expreſs Covenant to do it.

Leſſee for Years not bound to repair a Houſe burnt by Accident, unleſs there be a Covenant that he ſhall leave it in Repair; otherwiſe if it be burnt by the Negligence of the Leſſee, his Servants, &c.

E **A Leſſee** for Years is not bound to repair the Houſe let unto him, which is burned by Accident; if there be not a ſpecial Covenant in the Leaſe, that he ſhall leave the Houſe in good Repair at the End of the Term; but if the Houſe be burned by Negligence of the Leſſee, or his Servants, Wife or Children, he ſhall repair it, although there be no ſuch Covenant in the Leaſe to do it: *Paſch.* 24 *Car. B. R.* For by the Leſſee's Covenant it ſhall be intended, that he took Notice of what Accidents might happen; and his Covenant ſhall be taken generally, and without Exception, and ſtrongeſt againſt himſelf; for Negligence which is prejudicial to another, is puniſhable in Law.

A Leaſe for Years cannot be entailed.

F **A Leaſe** for Years, although it be a very long Leaſe, cannot be entailed; (but may be aſſigned in Truſt to ſeveral Uſes, which may be an Entail in Effect) for the Nature of a Chattel cannot be turned into an Inheritance: *Hill.* 23 *Car. B. R.* Which would be if ſuch a Leaſe which is but a Chattel might be entailed; for an Eſtate-tail is an Eſtate of Inheritance; yet in Chancery they do often make good ſuch Entails made by Will.

A **The** Truſt of a long Leaſe was limited thus: To the Father for ſixty Years, if he lived ſo long; afterwards to the Mother for ſixty Years, if ſhe lived ſo long; afterwards to *John* and his Executors if he ſurvived his Father and Mother, and if he died in their Life-time, having Iſſue, then to his Iſſue; but if he died without Iſſue, living the Father and Mother, the Remainder to *Edward* in Tail: *John* died without Iſſue in the Life of the Father and Mother. And it was reſolved, That *Edward* ſhould take this Remainder; for the whole Term had veſted in *John* if he had ſurvived, yet the Contingency never happening, and ſo wearing out in the Compaſs of two Lives in Being, the Remainder over to *Edward* might be limited upon it. *Inter Wood* and *Saunders*, before the Lord Keeper *Bridgman* aſſiſted with the Judges.

Leaſe limited to the Father for ſixty Years, then to the Mother for ſixty Years, if either lived ſo long; then to *J.* if he ſurvived the Father and Mother: But if he died in their Life-time, then to his Iſſue, if any: But if he died without Iſſue, the Remainder to *E.* in Tail. *J.* died without Iſſue in the Life of Father and Mother, *E.* ſhall take the Remainder for the whole Term.

B **If** a Leaſe for Years comes to be limited in Tail, the Law allows not a preſent Remainder to be limited thereupon; yet it will allow a future Eſtate ariſing upon a Contingency only, and that to wear out in a ſhort Time. By the Lord Chancellor *Finch* in the Duke of *Norfolk*'s Caſe, *fol.* 27.

If a Leaſe for Years be limited in Tail, no preſent Remainder can be limited upon it.

C **A Man** ſettles his Eſtate upon himſelf for Life, and afterwards to his Son in Tail, with Remainders over; and then he ſays, That if the Son ſhall die without Heir Male of his Body, that then his Daughters ſhall have his Lands for 100 Years, Proviſo, that if his Heir Male pay 1000 *l.* to every one of his Daughters within a Year after his Death, that then the Limitation ſhall be void: The Money was not paid after the Death of the Iſſue Male, and the Daughters enter'd: This was held a good Leaſe by way of future Intereſt, and that the Commencement of it was after the Death of the Heir Male of the Body of the Father without Iſſue. *Goodyear* and *Clerk*, *Trin.* 12 *Car.* 1643. *B.R.* But I ſuppoſe if the Heir in Tail had ſuffered a Recovery that would have barred this Contingency.

A. ſettles on himſelf for Life, then to his Son in Tail, with Remainders over: Then ſays, That if the Son die without Heir Male, his Daughters ſhall have it for 100 Years. Proviſo the Limitation to be void, if the Heir Male pay 1000 *l.* to each Daughter within a Year after his Death. The Money was not paid, and the Daughters enter'd; and held a good Leaſe by way of future Intereſt.

D **If** one be in Poſſeſſion of the Lands of another, and hath uſually paid a Rent unto him for theſe Lands, although it cannot be expreſly proved that the Lands were demiſed at Will to him that is thus in Poſſeſſion of the Lands, that is, That he ſhould hold them as long as both Parties ſhould pleaſe; yet if the Payment of a Quarter or Half a Year's Rent can be proved, this will be a good Evidence of a Leaſe at Will: *Mich.* 1650. *B. S.* For it ſhall be preſumed that he in Poſſeſſion doth hold the Lands, and that the Owner of the Lands did receive the Rent for thoſe Lands upon ſome private Contract made

Poſſeſſion and Payment of Rent, is good Evidence of a Leaſe at Will.

between

between the Parties for holding the Lands for ſome Term, and for paying of ſuch a Rent for them; and a leſs Time cannot be ſuppoſed, than to hold them at Will.

Leſſor enters before the Term is expired, and makes a ſecond Leaſe to another. Good 'till the firſt Leſſee re-enters.

A **If** one makes a Leaſe for Years, and afterwards the Leſſor enters upon the Lands let, before the Term is expired or determined, and doth make a Leaſe of theſe Lands to another, this ſecond Leaſe is a good Leaſe, until the firſt Leſſee doth re-enter: 2 *Maii, Paſch.* 1650. *B. S.* And then the firſt Leaſe is revived, and the firſt Leſſee is again in Poſſeſſion by Virtue of the firſt Leaſe.

Entry need not be pleaded upon a Feoffment, but in Caſe of a Leaſe for Years, it muſt.

B **There** needs no Entry to be pleaded upon a Feoffment, becauſe the Livery gives the Feoffee actual Poſſeſſion; but in Caſe of a Leaſe for Years, the Leſſee is not in actual Poſſeſſion until his Entry; and therefore the Pleading always is, *Virtute cujus* the Defendant enter'd, and was poſſeſſed, *&c.* See *Co. Lit.* 201. *a.*

Though Leſſee loſe his Indenture, he ſhall not loſe his Term.

In like Manner of any other Eſtate in Lands, if it can be proved there was ſuch a Deed,

C **Although** a Leſſee for Years do loſe his Indenture of Demiſe of the Lands let unto him, yet he ſhall not loſe his Term in the Lands let by the Indenture, which is ſo loſt; if it can be proved any Way that there was ſuch Term let unto him by Indenture, and that it is not determined. So it is of any other Eſtate in Lands, if the Deed that created the Eſtate be loſt, if it can be proved that there was ſuch a Deed made, and that ſuch an Eſtate was conveyed by the Deed: *Paſch.* 1650. 14 *&* 15 *Maii. B. S.* For the Eſtate in the Lands, is derived from the Party that made the Deed, and not from the Deed, otherwiſe than inſtrumentally and declaratively to ſhew his Mind and Intent that conveys the Eſtate, as alſo the Mind and Intent of him that receives it; and the loſing of the Deed can make no Alteration herein.

A Leaſe to a Man and her who ſhall be his Wife, is void.

D **A Leaſe** to a Man and to her whom he ſhall take to be his Wife, is void; for there ought to be ſuch Perſon at the Time of the Commencement of the Deed which might take. 4 *Leon.* Caſe 158.

Leaſe for 21 Years, if the Leſſee lives ſo long and continues in his Service, the Leſſor dies, the Term continues.

E **A Leaſe** was but for twenty-one Years, if the Leſſee lived ſo long and continued in his Service; the Leſſor died within the Term, the Leaſe continues; for there is not any Laches in the Leſſee, but it is the Act of God that he cannot ſerve longer. *Cro. Eliz.* 643. *pl.* 45.

All Leaſes, *&c.* not put into Writing, and that ſhall not be ſigned, ſhall have but the Effect of Leaſes at Will.

F **All** Leaſes, Eſtates, and Intereſts of Freehold, or Term of Years, or any incertain Intereſt, of, in, to, or out of any Meſſuages, Manors, Lands, Tenements, and Hereditaments, made and created by Livery and Seiſin only, or by Parol, and not put into Writing, and ſigned by the Parties ſo making and creating the ſame,

ſame, or their Agents thereunto lawfully authorized by Writing, ſhall have the Force and Effect of Leaſes at Will only, and ſhall not in Law or Equity be taken to have any other or greater Effect. Statute 29 *Car.* 2. *cap.* 3. Except Leaſes not exceeding three Years from the making; whereupon the Rent reſerved to the Landlord during ſuch Term, ſhall amount to two third Parts at the leaſt of the full improved Value of the Thing demiſed.

29 **Car.** 2. **cap.** 3.

What Leaſes are excepted.

Ibid.

A **Where** a Leaſe is made of Lands and Goods rendring Rent, it is iſſuing out of the Lands; and in Debt thereupon, if the Plaintiff declare upon his Caſe, he ſhall recover. *Cro. Eliz.* 607, *&* 623.

A Leaſe of Lands and Goods, the Rent ſhall be iſſuing out of the Lands.

B **A Leaſe** of Freehold and Copyhold; the Rent is for the Land, and ſhall Iſſue out of both. *Cro. Eliz.* 622. *pl.* 15.

A Leaſe of Freehold and Copyhold, the Rent ſhall iſſue out of both.

C **Where** ſeveral Things are let, *Reddend.* ſo much for one Parcel, and ſo much for another, they are ſeveral Rents. *Moore*, Caſe 349.

Where the Rents ſhall be ſeveral.

D **A Leaſe** for forty Years, to commence after the Death of the Leſſor, is good. 2 *Rep.* 35. But if it were for ſo many Years as ſhall be to commence at his Death, it is void for Uncertainty. 1 *Rep.* 155. *a.*

Leaſe for Years, to commence after the Death of the Leſſor, is good.

E **Where** a Term is granted to one for eighty Years, if he lives ſo long, and if he die within the Term, then for ſo much as ſhall remain of the ſaid Term ſhall be to *B.* for ſo many of the eighty Years as ſhall be unexpired. This is void; becauſe by the Death of the Leſſee, the Term for eighty Years is determined; ſo that there cannot be any Reſidue of that Term left, which is expired. 1 *Rep.* 153. *b.*

A Leaſe granted for eighty Years, if Leſſee ſo long live; and after his Death to *B.* for what ſhall remain, is void.

F **A Term** cannot commence upon a Contingency which depends upon another Contingency. 1 *Rep.* 156. *b.*

Term cannot commence upon a Contingency, after a Contingency.

G **Bargain** and Sale for Years for Money, is good, without Inrollment or Attornment. 2 *Rep.* 35, 36, *&c.*

Bargain and Sale for Years for Money, is good, without Inrolment or Attornment.

H **Although** the Statute ſays, all Grants, Leaſes, *&c.* made by any Biſhop, Dean, *&c.* in other Manner than is by 1 *Eliz.* enacted, ſhall be void, yet ſuch Leaſe is not void againſt the Biſhop, or Dean, *&c.* who made it, but only againſt their Succeſſors, 3 *Rep.* 59. *b.* 60. *a.*

Void Leaſes as to Succeſſors, are good againſt the Maker.

1 **Eliz.** not printed.

I **Tenant** in Tail makes a Leaſe for Years, not warranted by the Statute, and dies; the Iſſue accepts the Rent, the ſame ſhall bind him. 3 *Leon.* 365.

Iſſue in Tail accepts Rent upon a Leaſe not warranted by the Statute, this ſhall bind him.

How Declaration in Ejectment muſt be delivered to try the Title of Lands let by ſeveral Leaſes, if the Freehold be entire; and how if it be ſeveral.

A **Where** the Freehold of the Lands in Queſtion, in an Action of Treſpaſs and Ejectment, is entire, and theſe Lands be let out to ſeveral Perſons for Years by ſeveral Leaſes: If he, whoſe Title is concerned, doth intend to try the Title of theſe Lands, he muſt (if he intends to recover Poſſeſſion of the Whole) deliver a Copy of the Declaration in Ejectment to every Tenant in Poſſeſſion, or his Wife, that holds any of the Lands; for there ſhall no more Land be in Queſtion upon the Trials than for which ſuch Declaration was delivered; but where the Leſſor of the Plaintiff hath ſeveral Freeholds in Lands in the Poſſeſſion of ſeveral Perſons, there he muſt deliver ſeveral Declarations to each particular Perſon, and not Copies of Declarations, as in Caſe where there are ſeveral Tenants under one joint Title: *Paſch.* 23 *Car. B. R.* For ſeveral Freeholds muſt have ſeveral Leaſes to try them, becauſe they are the Right and Titles of ſeveral Perſons, or may be held by ſeveral Titles.

Copyhold, and what other Lands are uſually let within the Statute.

B **Lands** granted by Copy, are in Judgment of Law a Tenancy at Will; and Lands which have been uſed to be let at Will by him who hath the Inheritance, rendering Rent, are Lands accuſtomably letten within the Act of 13 *Eliz.* and 32 *H.* 8. *cap.* 28. 6 *Rep.* 37. *b.*

Lands accuſtomably let.

C **Where** a new Thing is demiſed, with Lands accuſtomably let, altho' there be a great Increaſe of Rent, yet the Leaſe is void: 5 *Rep.* 5. *b.* See 6 *Rep.* 37, 38. More Rent than the accuſtomed Rent may be reſerved.

Reſervation at two Feaſts inſtead of four.

D **A Reſervation** of Rent in a Biſhop's, *&c.* Leaſe, at two Feaſts, where it uſed to be at four, makes the Leaſe void: Becauſe four are more beneficial than two. *Ibid.*

A Leaſe for three Lives, Proviſo that the firſt ſhall take firſt, and the ſecond next; the Proviſo is void, and they ſhall take jointly.

E **A Leaſe** was made to three for their Lives, Proviſo that the firſt ſhall occupy firſt, the ſecond next; it came to be a Queſtion, Whether the Proviſo ſevered the joint Eſtate, and made them take in Remainders, or that it continu'd joint? Adjudg'd, That it continu'd joint, and that the Proviſo was void. *Cro. Eliz.* 89. *pl.* 13, 107.

Debt for Rent lies againſt a Leſſee a Diſſeiſor.

F **Where** a Leſſee is a Diſſeiſor, and continues a Diſſeiſor, yet Debt lies againſt him for the Rent, by Reaſon of the Privity of Contract. 2 *Leon.* 121.

How a Leaſe for Years in Remainder may be.

G **A Leaſe** for Years in Remainder may be upon a Leaſe for Life of the ſame Perſon. 3 *Leon.* Caſe 49. *fol.* 22.

A Leaſe for Years to commence after the Death of Leſſee for Life, is good.

H **A Man** leaſed for Life, and afterwards leaſed for Years, to commence after the Death of the Tenant for Life; this is a good future Intereſt. 4 *Leon.* Caſe 101. 2 *Saund.* 165. 2 *Sid.* 437.

A **A Leaſe** was made for ninety-nine Years to *J. S.* if he ſhould live ſo long, and if he died within the Term, then his Wife ſhould have it *Durante toto reſiduo termini præd.* *J. S.* dies within the Term: And adjudg'd, That the Wife ſhall not have it; for the Term was determined, and the Limitation to her void: For as a Remainder it cannot move, becauſe that muſt be created with the particular Eſtate, (which this was not) and muſt be limited for a certain Eſtate, as for Years, Life, or Fee, *&c.* Here it is uncertain whether ſhe will ever have it, for *J. S.* may out-live the ninety-nine Years; and therefore a Termor cannot grant his Term after his Death. *Cro. Eliz.* 216. *pl.* 15, 217. 1 *Co.* 155. *a.*

A Leaſe for ninety-nine Years, if he lived ſo long, and if he died within the Term his Wife ſhould have ſo much as remained, is void as to the Wife. It can't move as a Remainder. Void for Uncertainty. A Termor can't grant his Term after his Death.

B **But** a Termor may deviſe ſo much of his Term as ſhall be in arrear at the Time of his Death, and it ſhall be good, *Cro. Eliz.* 9. *pl.* 2. 8 *Rep.* 95. *a. b.* 96. *a.*

But he may deviſe it.

C **A Leaſe** was made for eighty Years if the Wife ſhall ſo long live; and if ſhe dies, the Son ſhall have it for the Reſidue of the Term then to come: This is void as to the Son, becauſe there can be no Reſidue of a Term, which before is determined. *Moore*, Caſe 441.

A Leaſe for eighty Years if the Wife lives ſo long, the Reſidue to the Son. It is void as to the Son, becauſe there can be no Reſidue of a determined Term.

D **Where** a Leaſe is renewed by an Executor, it ſhall be liable to a Legacy of the Teſtator's. *Chan. Rep.* 191.

An Executor renews a Leaſe, it ſhall be liable to a Teſtator's Legacy.

E **If** a Truſtee of a Term ſurrenders, and takes a further Term, that ſhall be for the Benefit of *Ceſtuy que Truſt.* *Chan. Rep.* 191.

Truſtee of a Term ſurrenders and takes a further Leaſe, it ſhall be for the Benefit of *Ceſtuy que Truſt.*

F **If** a Leaſe be made to *A.* during the Lives of *B.* and *C.* without ſaying, *And during the Life of the Survivor:* If one dies, the Eſtate is not determined, but *A.* ſhall have it during the Survivor's Life; for *A.* hath a Freehold by Way of Limitation of an Eſtate during the Lives of two Men, and by Conſtruction of Law, during the Life of the Survivor. But in Caſe of a Condition, as if Land be demiſed for ninety-nine Years, if *A.* and *B.* ſo long live: Here if one dies the Leaſe is determined, becauſe it was conditional. 5 *Rep.* 9. *a. b.* See 3 *Leon.* Caſe 150.

Leaſe to *A.* during the Lives of *B.* and *C.*

Or if *B.* and *C.* ſo long live.

The Difference.

G **A Leaſe** is made to *A.* and his Aſſigns to hold during the Lives of *B.* and *C.* This Limitation was held good; for the Leſſee had but one Eſtate, which hath this Limitation, *viz.* during the Life and Lives of *B.* and *C.* and he hath but one Freehold, ſo there can be no Merger; but he hath a Freehold to continue during the two Lives, and the Life of the Survivor. 5 *Rep.* 13. *a.*

Leaſe to *A.* during the Lives of *B.* and *C.*

No Merger.

Shall hold for the Survivor's Life.

Debt lies for Tenant *pur auter vie*, after the Death of *Ceſtuy que vie*.

32 H. 8. cap. 37.
29 Car. 2. cap. 3.

See an Expoſition of the Statute of 32 *H.* 8. *cap.* 37. where Debt is given to Tenant *pur auter vie* after the Death of *Ceſtuy que vie*, againſt the Tenant who ought to pay the Rent: 5 *Rep.* 118. *a.* See alſo the Statute of 29 *Car.* 2. *cap.* 3. A

Abſence of the Tenant for Life for ſeven Years, ſhall be accounted as dead.

19 Car. 2. cap. 6.

Stat. 6 Ann.

If a Perſon, for whoſe Life an Eſtate hath been, or ſhall be granted, ſhall remain beyond Sea, or abſent himſelf in this Realm for ſeven Years together, and no ſufficient Proof be made of the Life of ſuch Perſon, in any Action commenced for the Recovery of the Lands held for the Life of ſuch Perſon; then ſuch Perſon for whoſe Life the Lands were holden, ſhall be accounted as naturally dead. Stat. 19 *Car.* 2. *cap.* 6. See alſo another Statute made 6 *Annæ*, entituled, *An Act for the more effectual Diſcovery of the Death of Perſons pretended to be alive, to the Prejudice of thoſe who claim their Eſtates after their Deaths*, in Title **Death.** B

No Tenant's Goods ſhall be taken in Execution till the Leſſor is paid one Year's Rent.

8 Annæ.

By a Statute made 8 *Annæ*, Proviſion is made, that no Tenant's Goods ſhall be taken in Execution, or upon an Extent, until the Leſſor is paid one Year's Rent. Which ſee in Title **Execution.** C

Goods may be diſtreined after removed from the Land.

8 Annæ.

2 W. & M. Seſſ. 1. cap. 5.

That no Leſſee for Lives, Years, at Will, or otherwiſe, ſhall fraudulently carry off the Goods from the Lands to prevent a Diſtreſs for Rent; but the Leſſor, or any one by his Authority, in five Days next following ſuch Removal, may ſeize the Goods, and diſpoſe of them in ſuch Manner as is directed by the Statute of 2 *W.* & *M.* Which ſee in Title **Diſtreſs for Rent.** D

8 Annæ.

Proviſo, not to ſeize Goods ſold *bona fide*, for valuable Conſideration, before Seizure made. *Ibid.* E

Debt lies againſt Leſſee for Life for Rent.

Debt ſhall lie againſt Tenant for Life for Rent, as againſt Leſſee for Years. *Ibid.* F

A Diſtreſs may be within ſix Months after the Determination of a Term.

8 Annæ.

A Diſtreſs may be for Rent after the Death of Tenant *pur auter vie*, and the Determination of the Eſtates of Leſſees for Years, or at Will, provided it be within ſix Calendar Months after the Determination of their Eſtates, and the Continuance of the Leſſor's Title, and during the Poſſeſſion of the Tenant who owes ſuch Arrears. *Ibid.* See Titles **Execution, Rent, Diſtreſs for Rent.** G

Rendering to Leſſor *or* his Succeſſors, ſhould be, *and* his Succeſſors.

Rendering Rent to a Prebendary, *or* his Succeſſors, ſhould be to him *and* his Succeſſors, *viz.* to Leſſor for Life, and to his Succeſſor afterwards. 5 *Rep.* 111. *b.* 112. *a.* H

A **A Leſſor** grants his Reverſion, and afterwards releaſes the Covenants to the Leſſee before Breach; and held to be naught: Becauſe they will intend that the Action ſhall be brought upon the *Reddendum*, which is a Covenant in Law, and runs with the Reverſion at Common Law, before the Statute of *Hen*. 8. and paſſes by the Grant of the Reverſion; ſo that he cannot releaſe this after the Aſſignment. 2 *Lev*. 207.

A Leſſor grants his Reverſion, and afterwards releaſes Covenants to the Leſſee before Breach.

Reddendum is a Covenant in Law, and runs with the Land.

B **Leſſee** for Years lets Part of his Term with Covenants, and then grants the Reverſion: If the Covenants paſs to the Grantee, was the Queſtion. 3 *Lev*. 154, 155.

Where Covenants ſhall paſs to the Grantee of a Term.

C **Leaſe** for eighty Years, if he ſhall ſo long live; and after his Death for four Years; all makes but one Term: 1 *Lev*. 46. It being a Continuance of the former Term, and an Addition to it, and not a Remainder or future Intereſt.

Leaſe for eighty Years, if he ſo long live; and after his Death for four Years; all makes but one Term.

D **A Leaſe** of a Manor with geneal Words, of *Boſcis, Boſcorum vendition' magno Maheremio magnis Arboribus*: By theſe general Words, the Leſſee cannot fell Timber. *Hob*. 234. What a Leſſee may do, and what he muſt not do. *Hob*. 234, 235.

By what Words the Leſſee of a Manor may cut Timber. What a Leſſee may do, and what he muſt not do.

E **Leſſee** for Life or Years cannot by the Common Law, take Fuel but of Buſhes and ſmall Wood, and not of Timber-Trees: But if the Leſſor grants Fire-boot expreſly, then if the Leſſee hath not ſufficient Fuel as above, *&c*. he may take great Trees. 3 *Leon*. Caſe 38.

What Fuel Leſſee for Life or Years ſhall have, and what not.

F **A Leaſe** for Years is made, aud the Leſſor covenants that the Leſſee ſhall have Houſe-boot, Fire-boot and Cart-boot in other Lands from Time to Time: And held, That the Leſſee ſhall have them during the Term; and alſo that this Grant doth not reſtrain the Leſſee from having thoſe Boots alſo in the Lands let. *Moore*, Caſe 23.

Leſſee may have Boots in other Lands, and alſo in the Lands let.

G **Where** Tenant for Life or Years cuts down Timber, or pulls down the Houſes, the Leſſor ſhall have the Timber. 11 *Rep*. 81. *b*.

Leſſor ſhall have the Timber cut down by Tenant for Life or Years.

H **When** a Man makes a Leaſe for Life or Years, the Leſſee hath but a ſpecial Intereſt in the Timber-Trees, as Things annexed to the Lands ſo long as they are annexed thereunto, and to have the Maſt and Shadow for his Cattle: But when they are ſevered from the Land, the Intereſt of the Leſſee is thereby determined, and the Leſſor may take them as Things which were Parcel of his Inheritance. 4 *Rep*. 62. *b*. 11 *Rep*. 81. *b*. 82. *a*. 83. *b*.

What Intereſt a Tenant, Leſſee for Years or Life, hath in Timber Trees: And what the Leſſor hath.

I **If** *J*. leaſe Land for Life, and afterwards give the Trees, and afterwards the Leſſee dies, yet the Donee cannot take them; becauſe at the Time of

Where there is a Property in Trees, as annexed to the Land.

the Gift the Leſſee had a Property in them, as annexed to the Land. 4 *Rep.* 62. *b.*

Who ſhall have the Trees upon Conſtruction of the Words, *without Impeachment of Waſte.*

What Intereſt the Clauſe, *without Impeachment of Waſte,* gives.

A **The** Mother had an Eſtate for Life, without Impeachment of Waſte: And the Son had the Inheritance expectant; and held, That if the Eſtate for Life had been made without the Clauſe, *ſans Impeachment of Waſte,* the Son ſhould have the Trees as Parcel of his Inheritance; the Intereſt, which the Tenant for Life had, being gone by the Severance. 4 *Rep.* 62. *b.* 63. *a.* *Nota,* The Clauſe of, *without Impeachment of Waſte,* doth not give the Tenant for Life any greater Intereſt in the Trees, than ſhe had by the Demiſe of the Land, but only excuſes her from an Action of Waſte. 4 *Rep.* 63. *a.*

Of the Clauſe, *without Impeachment of Waſte,* or by any Writ of Waſte.

B **The** Clauſe of, *without Impeachment of Waſte,* gives Power to the Leſſee to cut the Timber, if he will execute it, during the Privity of his Eſtate: But if the Clauſe be, *without Impeachment of Waſte,* by any Writ of Waſte, there the Action only is diſcharged, and the Property of the Trees remains in the Leſſor. 11 *Rep.* 82. *b.* 83.

Who hath Intereſt in the Timber, when an Houſe falls down by Tempeſt.

C **If** an Houſe falls down by Tempeſt, *&c.* the Leſſee for Life or Years, hath a ſpecial Intereſt to take the Timber, to re-edify the Houſe for his Habitation: But if the Leſſee pulls down the Houſe, the Leſſor may take the Timber, as a Thing which was Part of his Inheritance, wherein the Leſſee's Intereſt is determined. 4 *Rep.* 63.

The Leſſor ſhall have Timber-Trees blown down.

D **Alſo** when Timber-Trees are blown down, the Leſſor ſhall have them, becauſe they were Parcel of the Inheritance: But if they were Dotards, then the Leſſee ſhall have them. *Ibid.*

Tenant for Life, Remainder in Fee, join in a Leaſe, how it is.

E **Tenant** for Life, Remainder in Fee, join in a Leaſe to the Plaintiff; by the Delivery of this Deed, it is the Leaſe of the Tenant for Life during his Life, and the Confirmation of him in Remainder: And after the Death of the Tenant for Life, it is the Leaſe of him in Remainder, and the Confirmation of Tenant for Life. 6 *Rep.* 14, 15. *a.* *Dalliſon* 72. *pl.* 52. *Popham* 57. *Moore,* Caſe 196.

What Leaſes by Tenant in Tail, or Churchmen, are good. 32 **H.** 8. **cap.** 28.

F **What** Leaſes by Indenture for Life or Years, by any of full Age, having Fee or Fee-tail in their own, Wife's or Church's Right, or jointly, ſhall be good, and what not. 32 *H.* 8. *cap.* 28.

A Leaſe for Life of Tithes, is void by 32 **H.** 8. **cap.** 28. But not a Leaſe for Years, and why.

G **A Leaſe** for Life of Tithes is void by the Statute of 32 *H.* 8. *cap.* 28. for nothing being let but Tithes which lie *in Prender*; and there is not any Remedy for the Rent by Diſtreſs or Aſſize, it is therefore void: But had it been a Leaſe for Years it had been good; for then Debt would have lain. *Cro. Jac.* 111. *pl.* 10. 112.

A **A Copyholder** for Life ſurrenders to the Lord in Tail, who leaſes for three Lives at the Copyhold-Rent; and adjudged a good Leaſe within the 32 *H.* 8. *cap.* 28. both as to the being uſually let; and alſo as to reſerving the old accuſtomed Rent. *Moore*, Caſe 1050. See in Title **Copyhold**.

Copyholder for Life ſurrenders to the Lord in Tail, who leaſes for three Lives at the old Rent, and good.

B **Where** it is the Wife's Land, the Wife muſt be a Party, and ſeal the Indenture, and the Rent muſt be reſerved to Baron and Feme, and her Heirs: And the Huſband cannot alien, diſcharge, or grant away the Rent, during the Coverture, *Ibid.*

What Leaſes of the Wife's Land are good.

C **The** Houſe of a Tenant at Will is burnt down by his negligent keeping of his Fire: An Action lies not for the Landlord againſt him for it; but an Action lies for voluntary Waſte in pulling down Houſes, or cutting of Woods. 5 *Rep.* 13. *b.* But I take it, That if the Leſſor was but a Tenant for Years, he may have an Action; but Tenant in Fee cannot.

Caſe lies not for Tenant at Will, for negligently keeping of his Fire: But it lies for voluntary Treſpaſs.

D **Now** by an Act made 6 *Annæ*, entituled, *An Act for the better preventing of Miſchiefs that may happen by Fire*, it is enacted, That no Action, Suit or Proceſs, ſhall be maintained or proſecuted againſt any Perſon, in whoſe Houſe or Chamber any Fire ſhall, after the firſt Day of *May* 1708, accidentally begin, or any Recompence be made by ſuch Perſon, for any Damage ſuffered, or occaſioned thereby; provided that it ſhall not extend to defeat or make void any Agreement between Landlord and Tenant. *Note*, This Part of the Act was to continue for three Years, and from thence to the End of the next Seſſions of Parliament. Stat. 6 *Annæ*. But was made perpetual by 10 *Annæ*, *cap.* 14.

The Clauſe of the Act for indempnifying of the Perſon in whoſe Houſe a Fire begins.

6 **Ann.** cap.

The Continuance of the Act.

E **One** may raiſe an Eſtate for Life in Lands to another by Way of Uſe, *viz.* by covenanting with *A. B.* in Conſideration of natural Love and Affection, *&c.* But a Covenant in Conſideration of Affection only, where there is no Conſanguinity; or for Money only, where there is no Relation; unleſs the Deed be enrolled, is void, and the Eſtate ſhall never riſe upon it: For the Eſtate is not executed in the *Ceſtuy que Uſe*, by the Statute *Uſes*. 27 *H.* 8. *cap.* 10. without Livery.

How an Uſe may be raiſed in Lands. There muſt be Conſanguinity. Where void without Enrolment.

27 **H.** 8. **cap.** 10.

F **Where** a Leaſe for Years is made by the Words, *Demiſe, Grant, and to Farm let*, the Leſſee is not in Poſſeſſion, ſo as to bring Treſpaſs, *&c.* until an actual Entry: But where the Words, *Bargain and Sale*, for Conſideration of Money, are in, although but for a Shilling, the Party is in Poſſeſſion preſently upon executing of the Deed, ſo as to accept a Releaſe, but not to bring Treſpaſs, *&c.* without a *Pedis poſitio*.

Where the Leſſee is not in Poſſeſſion to bring Treſpaſs, until an actual Entry.

Where Leſſee of a future Intereſt may aſſign his Leaſe off from the Land.

A **Leſſee** of a future Intereſt never enters by Virtue of his Term, but enters before, and continues after the Commencement of the Term, then the Leſſor ouſts him, the Leſſee may aſſign over his Term off from the Land. 1 *Lev.* 47.

But where Leſſee enters upon him, he cannot aſſign off the Land.

B **Leſſor** enters upon Leſſee for Years, this turns the Leſſee's Eſtate to a Right, ſo that he cannot aſſign the Term off from the Land. 1 *Lev.* 46. *Vide* 270, 271, 272.

The Land let, into whoſe Hand ſoever it comes, ſhall be ſubject to all lawful Remedies for the Recovery of the Rent. No Act of a Stranger can prejudice the Leſſor.

C **The** Land leaſed ſhall be ſubject to thoſe lawful Remedies which the Leſſor provides for the Recovery of his Rent or Poſſeſſion, into whoſe Hands ſoever the Land comes: And it is not the Act of a Stranger can deprive the Leſſor of the Advantage of that Condition which he annex'd to the Leſſee's Eſtate, when he parted with the Poſſeſſion of his Land to him. *Cro. Jac.* 300. *pl.* 5.

A Leaſe to commence after a former Leaſe, when there is none, commences preſently.

D **If** *A.* reciting that *B.* hath a Leaſe for Years, demiſes to *C.* for Years, to commence after the End or Determination of that Leaſe, and in Truth there is no former Leaſe; the Demiſe to *C.* ſhall commence preſently. 6 *Rep.* 36. *a.* *Vaugh.* 73, 74, 80, 81, 83.

Every Leaſe ought to have three Certainties.

E **Every** Contract ſufficient to make a Leaſe ought to have three Certainties: 1*ſt*, In Commencement. 2*dly*, In Continuance. 3*dly*, In the End. *Say & Smith.* 1 *Plow.* 272. *a.* 6 *Rep.* 35. *a.*

Void without a certain Commencement.

F **A Demiſe** having no certain Commencement, is void. *Vaugh.* 85.

Conditional Leaſe, and a Condition to have a Leaſe, how they differ.

G **There** is a Diverſity between a Conditional Leaſe, and a Condition to have a Leaſe; for a Conditional Leaſe is good, till the Condition broken; then the Leaſe goes before, and the Condition comes after: But in a Condition to have a Leaſe the Condition goes before, and the Leaſe comes after, and ſhall be no Leaſe until the Condition be performed. *Ibid.* 272. *a.*

Where Articles to have a Leaſe ſhall amount to a preſent Leaſe.

H **In** Debt for Rent it was found, that Articles indented were made between the Plaintiff and Defendant, and ſealed, wherein the Plaintiff covenanted to let the Lands for five Years, at 100*l.* *per Ann.* Rent, to commence at *Michaelmas* next, provided he ſhall pay 100*l.* annually, during the Term at *Lady-day* and *Michaelmas* by equal Portions: All the ſaid Parties covenant, that a Leaſe ſhall be made and ſealed according to thoſe Articles, by the Feaſt of *All-Saints* next; the Defendant entered and Rent was arrear: Whether this was an immediate Leaſe, or but an Argument to have a Leaſe? And agreed to be a good Leaſe. *Cro. Eliz.* 486. *pl.* 2. See *Hob.* 35.

A **By** Articles of Agreement it was covenanted and agreed, That *A. B.* ſhould enjoy ſuch an Houſe for ſix Years, and *A. B.* for himſelf, his Heirs, Executors, and Aſſigns, covenants to pay to the Leſſor, his Heirs, Executors, or Aſſigns, the annual Rent of 90 *l.* during the ſix Years, at *Lady-day* and *Michaelmas*, the Leſſor dies; and whether his Executor or Heir ſhould have this 90*l.* *per Annum?* For if it were a Rent, it ſhall go to the Heir; if only a Sum in Groſs, then to the Executor. But adjudg'd, That it is a Rent, and enſues the Reverſion, and ſhall go to the Heir. *Cro. Car.* 207. *pl.* 1.

Where a Covenant to pay ſo much yearly ſhall amount to a Leaſe.

B **Church** Leaſes, nor College-Leaſes, ſhall not be conſtrued to be void, by the Statute of 13 *Eliz.* if made of any Houſe, not the Capital Houſe, nor for above ten Acres of Ground, in any City, Borough, or Market-Town, or Suburbs thereof: But the ſame may be made as they might have been before the Statute of 13 *Eliz. cap.* 10. and ſo ſhall be good; and this is by the Statute of 14 *Eliz. cap.* 11. *ſect.* 17. *Hob.* 269.

What College or Church-Leaſes ſhall be good, tho' made contrary to 13 **Eliz. cap.** 10.

14 **Eliz. cap.** 11. **ſect.** 17.

C **The** Dean and Chapter of St. *Paul's* let a Leaſe in *London* for forty Years, which Houſe was then in Leaſe for ten Years; this is a void Leaſe by the Statute of 31 *Eliz. cap.* 10. not warranted by 14 *Eliz. cap.* 12. For tho' it is to commence preſently, yet it is in Law a Leaſe of the Reverſion. *Note*, This is a general Law. *Cro. Eliz.* 564. *pl.*

Where Churchmen are tied up from letting of a Leaſe in Reverſion.

13 **Eliz. cap.** 10.
14 **Eliz. cap.** 12.

D **There** is a Proviſo in a Deed, That the Plaintiff may leaſe for twenty-one Years at the ancient Rent, ſo long as the Leſſee ſhall pay the Rent: Theſe are Words of Limitation; and the Non-payment of the Rent determines the Term without a Demand of the Rent. *Vaugh.* 32.

A Proviſo to hold the Land ſo long as he ſhall pay the Rent, is a Limitation, and Nonpayment avoids the Leaſe.

E **A Leaſe** for a Year, and ſo from Year to Year, *quamdiu, &c.* is a Leaſe for two Years certain, and after at Will. *Salk.* 413, 414.

Where a Leaſe for two Years.

F **And** after every ſubſequent Year begun, is not determinable till that be ended. *Salk.* 414.

G **And** is not void by the Statute of Frauds. *Ibid.*

H **When** a Leſſor or Leſſee at Will may determine his Will. *Vide bis Salk.* 413.

Leſſee at Will.

I **Termor** for Years grants for a leſs Term to commence after his Death, 'tis good. *Ibid.*

A Leaſe to commence after the Leſſor's Death.

K **Leaſes** of Copyhold Lands are void, and a Forfeiture. *Salk.* 187. 537.

Copyhold.

L *Quære* of Leaſes in Poſſeſſion and Reverſion. *Ibid.* 537.

Poſſeſſion and Reverſion.

M **For** Biſhop's Leaſes, *vide* Biſhops, *&c. Ibid.* 189.

Biſhop's Leaſes.

Grantor having a tortious Reverſion.

A Leaſe made by a Perſon who has a tortious A
Reverſon, ſhall be good if before the Commencement of the Leaſe, and if the Tort be purged, and the Leſſor hath a rightful Eſtate. *Skin.* 3.

Or Poſſeſſion.

So a Leaſe made by one who hath no Eſtate, B
good, if the Leſſor be intitled before the Commencement. *Ibid.*

Declaration for Rent upon a Leaſe, alledging the Rent due at *Michaelmas*, when the Rent was not payable at the Feaſts.

A Writ of Error on a Judgment in an Action of C
Debt for Rent, the Declaration was, that the Plaintiff the 25th Day of *March*, *&c.* demiſed *unum Meſſuagium ſuper acclivitatem Hampſtead Hill habend'*, *&c.* and alſo upon another Demiſe 1 *May*, *&c.* and for Rent arrear, *&c.* the Defendant pleaded that the Plaintiff *tempore dimiſſ. Particularum nihil habuit in tenementis*, the Plaintiff replied, that Lord *W.* was ſeiſed, and demiſed to him for, *&c.* and he being ſo poſſeſſed *May* 1. demiſed to the Defendant, to which the Defendant demurred, and in *C. B.* adjudged for the Plaintiff, it was ſaid to be wrong, for that the Action was brought for half a Year's Rent ending at *Michaelmas*, when it was not reſerved upon the four uſual Feaſts, *Quære.* *Skin.* 307.

When to determine the Will.

The Leſſee upon a Leaſe at Will, cannot deter- D
mine his Will after a Quarter is begun, without a Quarter's Rent, nor the Leſſor without loſing a Quarter's Rent. 3 *Salk.* 222.

Where the whole Term paſſed.

The Leſſee granted the Lands to *W. R.* his Exe- F
cutors, *&c.* *habendum* to him and to his Executors after the Death of the Grantee; adjudged that the whole Term paſſed. *Ibid.*

Commencement.

Where a Leaſe is to commence from a Day to E
come, that Day is excluded. *Mod. Caſes in Law and Equity* 54.

Leſſee or Diſſeiſor is liable to Rent.

If the Leſſee enter before the Day, he is a Diſ- G
ſeiſor, and if he continue in Poſſeſſion after the Day, tho' by the Leſſor's Conſent, he is liable to Debt for the Rent arrear, for no Act of the Leſſee ſhall hurt the Contract, *&c.* *Ibid.* 55.

Who deem'd the Occupier.

A Rector makes a verbal Leaſe of his Tithes for H
one Year, at ſo much *per* Acre, the Leſſee lets them to the reſpective Landholders at 6*d.* *per* Acre more; adjudg'd the Leſſee is the Occupier of the Tithes, and not the Rector. *Ibid.* 61, 62.

Marriage.

Of Powers to make Leaſes, *&c.* reſerv'd in Mar- I
riage Settlements, *&c.* *Ibid.* 249 to 252, and Tit. **Power.**

Leaſe of a Corporation to one, being an integral Part.

Two Bailiffs are of a Corporation, if one makes K
a Leaſe to the other, 'tis void. *Ibid.* 303.

Leet.

See { **Amercement.**
Conſtable.
Courts.
Diſtreſs.
Fines for Offences.

Court-Leet, what.

A **A Court-Leet is a Court for the Puniſhment of Miſdemeanors, Encroachments, Nuſances, &c. and the Jury is to preſent them, and impoſe the Amercements; but thoſe muſt be affeered.**

Of what Offences a Leet may inquire.

B **Leet** is a Court derived out of the Sheriff's Tourn, and inquires of all Offences under the Degree of High Treaſon; but thoſe Offences which are to be puniſhed with Loſs of Life and Limb, are only inquirable there, and muſt be certified over to the Juſtices at the Aſſizes. See Statute 1 *Ed.* 3. *cap.* 16.

If the Leet neglect to chuſe a Conſtable, the Quarter-Seſſions may chuſe one.

C **If** a Court-Leet do not chuſe a Conſtable to ſerve within that Leet, the Quarter-Seſſions of that County where that Leet is, may chuſe one: *Mich.* 22 *Car. B. R.* For the Common-wealth muſt not be unſerved, and it much concerns the Peace of the Common-wealth, but more eſpecially of the County wherein the Leet lies, to have ſuch Officers choſen.

Whether a Court-Leet may inquire of private Batteries, if there be no Bloodſhed.

D *Quære*, Whether a Court-Leet may inquire of private Aſſaults and Batteries, if there be no Bloodſhed in the Caſe? For *Bacon* Juſtice, and *Walker* Apprentice of the Law in the *Inner-Temple*, held, That a Court-Leet might inquire of them. But *Rolle* Juſtice held the contrary: *Paſch.* 24 *Car. B. R.* Becauſe they are actionable at the Common Law by the Parties injured, and are not Offences againſt the Publick; but there may be an Indictment at the Seſſions, or an Information in the Crown-Office for a Battery, although there be no Bloodſhed.

In

The Day when the Court was held muſt appear in the Preſentment.

A **In** a Preſentment in a Court-Leet, it ought to appear upon what Day the Court was held: 2 *Saund.* 291. And at what Time a Court-Leet may be held. *Vide Mag. Chart. cap.* 35.

Cannot amerce for Things to the Lord's Damage.

B **A Leet** cannot amerce for Things to the Damage of the Lord: *Raym.* 160. For the Court can amerce for nothing, except publick Nuſances, and not for any particular Treſpaſs or Damage to the Lord, or any other. 1 *Saund.* 135, 136.

A Leet may be held oftner than twice a Year by Preſcription: *Magna Charta, cap.* 35. 9 H. 3.

C **A Man** may preſcribe to hold a Leet oftner than twice a Year, and at other Days than are ſet down in *Magna Charta cap.* 35. 2 *Leon.* Caſe 266.

Every Man ought to be within a Leet, but none can be of two Leets.

D **The** Rule is, That every Man ought to be within a Leet, and none can be of two Leets. *Cro. Jac.* 584.

The Lord may diſtrein, or bring Debt: The Officer muſt have a Warrant from the Court, which will excuſe him. And why.

E **The** Lord of a Leet may diſtrein, or bring Debt for a Fine; but the Officer muſt have a Warrant to diſtrein; and ſhall not be puniſh'd, becauſe he doth it by the Authority and Colour of Juſtice. *Keil.* 66. *b.*

Diſtreſs for a Fine in a Leet, for not ſerving Conſtable: Three Points debated.

F **Upon** a Diſtreſs for a Fine in a Court-Leet, for refuſing to hold Conſtable, theſe three Points were debated. 8 *Rep.* 38. *b.*

1. **If** the Steward may impoſe a Fine in this Caſe? G
2. **If** the Fine ought to be affeered?
3. **If** the Lord may diſtrein for it without Cuſtom? 8 *Rep.* 28. *b.*

Court Leet is a Court of Record.

The Steward may impoſe Fines.

For what Offences.

H **It** was adjudg'd, That for Contempts, or Diſturbances in Courts of Record, as a Court-Leet is, a reaſonable Fine may be impoſed by the Steward of the Leet; as where a Bailiff refuſes to execute his Office; or a Tythingman to make a Preſentment; or if one of the Jury departs without giving of his Verdict. 8 *Rep.* 38. *b.*

A Steward of a Leet may aſſeſs a Fine for a Contempt in Court, and bring an Action of Debt for it.

I **The** Steward telling the Defendant that he was a Suitor and ought to be ſworn, the Defendant contemptuouſly told him, he lied; for which he impoſed a Fine upon him of 20 *s.* for which Debt was brought, and held maintainable; and that for this Contempt and Abuſe to him, being a Judge, and in his Authority, he might well fine him; and for ſuch Fine aſſeſs'd by a Steward, Debt lies without any Preſcription to aſſeſs ſuch Fines, or bring an Action for them. *Cro. Eliz.* 581. *pl.* 4.

There are two Manner of Offences puniſhable in Leets, ſome committed out of Court, and ſome committed in Court: Of thoſe which are done out of Court, the Jurors of the Leet have Conuzance, and there-

therefore Power to preſent them, and impoſe Amercements: But of Contempts and Miſdemeanors in Court before the Steward himſelf, he hath Conuzance of them, and may impoſe a Fine for them, and a Diſtreſs, for it is incident of common Right. 8 *Rep.* 41. *a. b.* But Amercements muſt be affeered, and a Diſtreſs may be for the Amercement. 8 *Rep.* 39, 41. *a. b.* 11 *Rep.* 43. *b.*

Amercements. Fines.

Diſtreſs for the Fine.

Affeered the Amercement.

A **The** Lord may ſell the Diſtreſs, or put it into the common Pound at his Pleaſure. 8 *Rep.* 41. *b.* The Lord may ſell the Diſtreſs as the King may do. 3 *H.* 7. 4. *b. pl.* 15.

The Lord may ſell or impound the Diſtreſs.

B **Court-Leets** may fine, but not impriſon. 11 *Rep.* 44. *b.*

Court-Leets may fine, but not impriſon.

C **County-Courts**, Hundred-Courts, and Courts-Baron, can do neither; but only amerce. *Ibid.*

What County, Hundred, and Courts Baron can do.

D **Some** may impriſon, and not fine: As the Conſtable at the Petit Seſſions for an Affray. 11 *Rep.* 44. *a.*

Some may impriſon, and not fine.

E **Some** can do neither, as Eccleſiaſtical Courts. *Ibid.*

Who can do neither.

F **The** Reaſonableneſs of the Fine ſhall be adjudged by the Court; and if they think it exceſſive, it ſhall not bind. *Ibid.* And ſo it is in the Caſe of Copyhold Fines, if the Lord's Demands be unreaſonable. *Ibid.*

The Reaſonableneſs of the Fine ſhall be adjudged by the Court.

G **The** Amercement ought to be the Act of the Court. The affeering, the Act of the Jury. *Show. Rep.* 62.

Amercement by the Court. Affeering by the Jury.

H **The** Names of the Affeerors ought to be expreſſed, or elſe it is naught. *Keilw.* 66. *a.*

The Affeerors muſt be named.

I **By** *Frowick* and *Kingſmill.* All Fines in Leets may be aſſeſſed by the Steward, and all Amercements muſt be affeered by the Affeerors; and in an Avowry for an Amercement, the Defendant muſt alledge a Preſcription in the Uſe of this aſſeſſing by Affeerors. *Keilw.* 65. *a. pl.* 5. See 8 *Rep.* 38, 39. 11 *Rep.* 43. *b. Cro. Eliz.* 241.

K **A Preſentment** in a Leet of a Matter within the Juriſdiction of the Leet, ſhall be intended to be as true as the Evangeliſt; to which there ſhall not be any Traverſe, except it be of a Matter touching Freehold, or the Life of a Man. *Keilw.* 66. *b. Dyer* 13. *b. pl.* 64.

Where a Preſentment in a Leet ſhall be traverſ'd and where not.

L **Preſcription** for a Court-Leet, and that the chief Pledges ought to pay 10 *s.* *pro certo Letæ* to the Lord, which the Jury ought to preſent; and being ſworn, did contemptuouſly refuſe to preſent their Cuſtom, and the Steward fined them 6 *l.* and a Diſtreſs was made for the 6 *l.* and the 10 *s.* 11 *Rep.* 42. *a. b.* 43, 44, 45. Adjudged, That the Jurors ought to be fined ſeverally; for the Refuſal of every of them was per-

Preſcription for a Leet, and Cuſtom to pay 10 *s.* Jury fined for refuſing to preſent the Cuſtom.

Jurors ought to be fined ſeverally.

ſonal; and if ſome were ready to preſent, and the others not, the Refuſers were only to be fined. 11 *Rep.* 42, 43.

10 *s. pro certo Letæ.*

Of Leets and Amercements, and chief Pledges.

The Lord may have 10 *s. pro certo Letæ* of all the Reſiants within his Manor. 6 *Rep.* 77. *b.* But the Lord cannot have it without Preſcription; neither can he have a Diſtreſs without a Preſcription. 11 *Rep.* 44. *b.* A

From whence came the Duty *de certo Letæ.*

The Leet was by the King divided and derived from the Sheriff's Torn, and granted to the Lords to have a View of the Tenants and Reſiants within their Manors, ſo as they ſhould have Juſtice done them at their own Doors as they had in the Torn; and from thence came the Duty in many Leets to the Lords *de certo Letæ* towards the Charge of obtaining a Grant of the ſaid Leet. *Co.* 2 *Inſt.* 71. B

Of Leets or Amercements.

A Reſiant certified to be a chief Pledge, was amerced for his Default 2 *s.* 6 *d.* And what Leets are, and who are chief Pledges. 6 *Rep.* 77. *b.* 78. *a.* C

The Steward cannot fine for not doing Suit at Court: But it muſt be an Amercement.

The Steward cannot fine a Man for not doing Suit at Court without a Preſentment that he ought to do it: But in ſuch Caſe he ſhall rather be amerced than fined. *Cro. Eliz.* 241. *pl.* 2. See *Hob.* 129. D

Where a Man ſhall be fined, and where amerced for refuſing to ſerve Conſtable.

The Steward may impoſe a Fine upon a Perſon who is elected Conſtable by the Jury, if he be preſent at the Court, and refuſes to be ſworn; but if he be not preſent, the Steward cannot fine him; but he may be amerced, which muſt be preſented and affered at the next Court; and after the Court is over, a Juſtice of Peace muſt, upon the Steward's Certificate that he is choſen, ſwear him. 5 *Mod.* 130. *Note,* If the Party be not in Court, he ought to be ſummoned, and the Time and Place appointed, under a Penalty, when and where he ſhall come, and before whom to take the Oath. 5 *Mod.* 131. E

The Party if not preſent, muſt be ſummoned to take the Oath.

What Fines and Amerciaments may be at a Court-Leet.

What Fines and Amerciaments may be impoſed at a Court-Leet, and how to be levied. *Keilw.* 65. *a. Plow.* 6, 52. *a.* F

A Leet-Jury ſhall not be fined for not giving in their Verdict.

A Jury in a Leet ſhall not be fined for not giving in their Verdict; and a Fine, which was ſet upon a Leet-Jury, for not giving in their Verdict, was quaſhed upon a *Certiorari*; becauſe no Fines ought to be impoſed in this Caſe: But it was heretofore puniſhable in the Star-Chamber. *Alcock*'s Caſe, *Paſch.* 7 *Will. B. R.* 8 *Rep.* 34. *a.* G

Who is Judge in a Leet.

In a Leet, or Pie-Powder-Court, the Steward is Judge. H

Juſtification.

Where a Juſtification under a Preſentment in a Court-Leet was good. 3 *Salk.* 52. I

A **In** Treſpaſs the Defendant Pleads a Special Juſtification for an Amerciament upon a Preſentment by the Jury for a Nuſance at the Court-Leet of the Archbiſhop of *Canterbury*; adjudg'd for the Plaintiff, for the Defendant ought to ſhew the Bounds and Limits of the Leet, and over what Perſons the Leet has Juriſdiction as to ſay, *De Reſidentibus & Inhabitantibus infra Maner' de Lambeth, &c. Skinner* 390.

That the Bounds and Limits of the Leet to be ſhewn.

Legacy, See **Deviſes.**

Letter of Attorney, See {**Attorney.** / **Authority.** / **Power.**}

Letter of Licence, See **Defeaſance.**

Letters Patents, See {**King and King's Grants.** / **Non obſtante.**}

Levant and Couchant.

B **Levant and Couchant is ſaid to be, when the Cattle of a Stranger are come into another Man's Ground, and there have remained a good Space of Time.** Terms of the Law. 231. **I ſuppoſe the Space of Time muſt be a Day and a Night, or more.**

Levant and Couchant, what.

C **The** Lord or Grantee of a Rent-charge, or Leſſor, may diſtrain the Cattle of a Stranger for Rent, which they find upon the Land before they are Levant and Couchant, where they eſcape upon the Land without any Default of Fences; or in Caſe the Tenant of the Land where they are diſtrained, is not bound to repair the Fences, for Default whereof the Cattle come there. But if the Cattle eſcape for Default of Fences to be repaired by the Leſſor or his Leſſee, the Leſſor cannot diſtrain the Cattle of a Stranger which come there by his Default (although they are Levant and Couchant) before Notice given to the Owner of the Cattle, and their Continuance there afterwards; becauſe he ſhall not take Advantage of his own Tort.

Where a Lord or a Leſſor may diſtrain the Cattle of a Stranger which come upon the Land, and where not.

But

But the Lord or Grantee of a Rent-charge, who have nothing to do with the Fences, may diſtrain the Cattle of a Stranger Levant and Couchant, if the Owner of the Cattle doth not make freſh Purſuit, altho' he had Notice that they were there; becauſe there is no Default here in the Lord or Grantee, as there is in the Caſe of a Leſſor. 2 *Lutw.* 1580.

A Stranger's Cattle Levant and Couchant, may be taken upon a *Levari* upon an Outlawry.

The Cattle of a Stranger Levant and Couchant upon the Lands of an outlawed Perſon, may be taken and ſold by Virtue of a *Levari facias.* 5 *Mod.* 113, 114, 115, *&c.* A

Libels.

See { Indictment.
Prohibition.

Libels, what.

ALL Libels are made againſt private Men, or Magiſtrates, or publick Perſons; but thoſe againſt Magiſtrates deſerve the greateſt Puniſhment. 5 Rep. 125. B

Againſt private or publick Men, puniſhable though dead.

Although a private Man or Magiſtrate be dead at the Time of the making of the Libel, yet it is puniſhable; For in one Caſe it excites thoſe of the Family, Blood or Society, to revenge and break the Peace; and in the other, it is a Slander to the Government, which never dies. 5 *Rep.* 125. *b.* C

There are ſeveral Sorts of Libels, beſides written Libels; as Pictures, Signs of Gallows, or Pillory, *&c. Ibid.* D

What he who finds a Libel ought to do.

When any Man finds a Libel, if it be againſt a private Perſon, he ought to burn it, or deliver it to a Magiſtrate: But if it concerns a Magiſtrate, then he ought to deliver it preſently to a Magiſtrate. *Ibid.* E

What makes a Libel, and what not.

Every one convicted of the publiſhing of a Libel, ought to be eſteemed the Contriver, Procurer, or malicious Publiſher, knowing of it to be a Libel. F

What is a Publication, and what not.

For if one hears or reads a Libel, it is no Publication: For before he hears or reads it, he cannot know it to be a Libel; nor if he laughs at it, it is G no Publication: But if he repeats it, or any part of it, in the Hearing of others, it is a Publication of a Libel: So if he writes a Copy, and doth not publiſh it to others, it is no Publication of a Libel. 9 *Rep.* 59. *b.* 60. *a.*

A **The** Procurer and Writer of a Libel are both Contrivers; Alſo the procuring of another to publiſh it, and alſo the Publiſher, are both Publiſhers. *Moore*, Caſe 1100.

The Procurer, Writer, and Publiſher, *&c.*

B **The** making of a Libel is an Offence, tho' never publiſh'd; and if one dictates, and another writes, and a third approves of what is written, they are all Guilty of making it. 5 *Mod.* 167. See *Moore*, Caſe 1100.

Who are Guilty of making Libels.

C **It** is no Offence to repeat Part of a Libel in Merriment, without Malice, or Purpoſe of Defamation: *Moore*, Caſe 862. Alſo held, That a Libeller is puniſhable, tho' the Matter of the Libel is true. *Ibid.* See *Moore*, Caſe 1100.

No Offence to repeat Part of a Libel in Merriment.

Shall be puniſh'd tho' the Libel be true.

D **The** whole Libel need not be ſet forth in the Indictment; but if any Part qualifies the reſt, it may be given in Evidence. *Salk.* 417.

What to be ſet forth, and what to be given in Evidence.

E **Copying** a Libel is criminal, and writing a Copy without Authority is writing a Libel. *Salk.* 417, 419.

What makes a Libel.

F **He** that writes a Libel is the Contriver, and having a written Copy of a known Libel is Evidence of a Publication. *Ibid.* 418.

The like.

G **Where** a Matter is unlawful in general, a general Allegation ſhall be ſo taken. *Ibid.*

General Allegation.

H **What** ſhall be a Libel, and what not. See 3 *Salk.* 224, 225, 226.

What a Libel.

I **Where** the Information and the Libel differ but in one Word, 'tis ill. *Ibid* 224.

Variance.

K **Where** the Indictment was for compoſing, making, and writing a Libel; the Jury found the Defendant guilty only of writing it: This amounts to making and compoſing it. *Carth.* 407, 408.

What amounts to compoſing a Libel.

L *C.* forged an Order of Chancery, in which were ſeveral defamatory Expreſſions againſt the Plaintiff, and at the End draws a Pillory, and ſubſcribes it for Sir *J. H.* and his forſworn Witneſſes by him ſuborned: This is but one complicated Act, and an Action will lie. *Skinner* 123.

Where an Action will lie for defamatory Repreſentations.

M **To** print and publiſh a Petition before the Delivery, that one is an unjuſt Man, is actionable. *Ibid.* 124.

What a Libel.

N **To** ſay one is a diſhoneſt Man is not actionable; but to publiſh ſo, or put it up upon Poſts, is actionable. *Ibid.*

The like.

Attachment.

An Attachment was granted againſt the Publiſher of a Libel until he produc'd the Author. *Mod. Caſes adjudg'd in the Court of* King's Bench, *in the Reign of K.* George, 123. A

Bail.

One outlawed for a ſeditious Libel may be bailed on his bringing a Writ of Error. *Ibid.* 177. B

Information ill, where.

An Information for a Libel laid disjunctively, *viz. Scripſit ſeu ſcribi cauſavit*, is ill. *Ibid.* 328. C

Libels in the Spiritual Court.

For Libels in the Spiritual Court and Admiralty. *Vide* Title **Prohibition.** *Ibid.* D

Liberate.

Liberate, what.

Liberate **is an original Writ, iſſuing out of the Chancery, to the Treaſurer, Chamberlains, and Barons of the Exchequer, or Clerk of the Hamper,** &c. **for the Payment of an annual Penſion, or other Sum, granted under the Great-Seal: Or to a Sheriff to deliver Poſſeſſion of Lands or Goods extended.** E

The Conuſee hath not any abſolute Property in the Goods 'till the *Liberate*. He may refuſe them if over-valued.

By the Extent the Conuſee hath not any abſolute Intereſt in the Goods, until the *Liberate*: And at the Return of the Writ he may refuſe them, if over-valued. *Cro. Car.* 148. *pl.* 3. 149. F

What turns the Eſtate of the Conuſee to a Right.

Conuſee of a Statute extended it, and a *Liberate* returned, executed, and Poſſeſſion given; but the Conuſee never entered actually; and after the Conuſee aſſigns the Tenement, continuing always in Poſſeſſion, this does not amount to ſuch a Poſſeſſion as will make the Aſſignment good, for there muſt be an actual Entry; and though the Return of the *Liberate* be an actual Poſſeſſion in Law, yet when he who was in Poſſeſſion continues it, this amounts to an Ouſter, which turns the Eſtate of the Conuſee to a Right. *Skinner* 300. G

Where a *Liberate* is neceſſary.

Where the Sheriff may deliver any thing extended without a *Liberate* directed to him, and where there muſt be a *Liberate*. 3 *Salk.* 159. H

Liberty.

A Matters which do concern the Liberty of any one, ought to be determined as ſpeedily, as lawfully they may be: *Trin.* 22 *Car. B. R.* For Liberty is counted very precious, and exceedingly favoured in Law, not only in Reſpect of the Profit, which every one obtains by his Liberty, but alſo in Reſpect of the Weal-publick; for one in Priſon is diſabled to be uſeful to himſelf, or any other; and every good Subject is uſeful as well to the Publick as to himſelf.

Matters which concern the Liberty of any Man ought to be determin'd ſpeedily.

Licence.

B **A Licence is a Power or Authority given to a Man to do a lawful Act, without which Authority he could not do it. Also a Licence by the Leſſor to the Leſſee, will exempt him out of the Penalty of a Condition.** Co. Litt. 52. b.

Licence, what.

C **A Licence** is countermandable altho' it be for Profit or Pleaſure, unleſs there be a certain Time in the Licence: As if I licence one to dig Clay in my Land, this is revocable, and may be countermanded, altho' it be in Point of Profit; but if it be until ſuch a Time, it cannot. *Poph.* 151.

When it is countermandable, when not.

D **If** a Licence, which gives an Authority, is executed, this is not then revocable: But where ſuch a Licence is executory, it is. 2 *Roll. Rep.* 152.

Where a Licence is revocable, and where not.

3,

Where the Law gives an Addition to the Plaintiff's Licence.

If a Man gives a Duke Licence to chaſe in his Park, the Law for Convenience gives him ſuch Attendants as are requiſite to the Dignity of his State. 9 *Rep.* 49. *b.* A

How it is where the Licence is abuſed, when given by the Law, and when by the Party.

When any Authority or Licence is given to any Man by Law, and he abuſes it, he is a Treſpaſſer *ab initio.* 8 *Rep.* 146. *a.* B

A Licence ſaves the Puniſhment.

But where an Authority or Licence is given by the Party, and he to whom it is given abuſes it, he ſhall be puniſh'd for the Abuſe, but ſhall not be a Treſpaſſer *ab initio*: And the Reaſon of this Diverſity is, becauſe where the Law gives the Licence, it will adjudge by the ſubſequent Act *quo animo*, or to what Purpoſe he did it. But when the Party gives a Licence to do any Thing, he cannot puniſh what is done by his own Authority and Licence. 8 *Rep.* 146. *b.* C

Where in Pleading there muſt be a *Profert in Cur.* of a Licence.

Where the Party doth not claim any Intereſt in the Land, but there is a Licence to him to do an Act which is meerly collateral to the Intereſt thereof, and only pleaded to excuſe a Forfeiture of a Leaſe, there need not be a *Profert in Curia* of the Licence; becauſe it is not like to a Releaſe or Confirmation, for they transfer a Right. 6 *Rep.* 38. *a.* D

And where not. Where a *Profert*. Where no *Profert.*

When a Deed is requiſite *ex inſtitutione Legis*, this ought to be pleaded with a *Profert in Cur.* altho' it concerns a collateral Thing, or transfers, or conveys nothing: But when it is requiſite *ex proviſione Hominis*, there the Proviſion of Men ſhall not alter the Law. As if *A.* leaſes to *B.* for Years, upon Condition that he ſhall not aſſign over but by Deed, and not by Parol; here *ex proviſione Hominis*, the Aſſignment ought to be by Deed: But becauſe *ex inſtitutione Legis*, a Deed is not neceſſary to the Aſſignee, he may plead a Licence without ſhewing of the Deed. 6 *Rep.* 38. *b.* *Cro. Jac.* 102. *pl.* 36. E

For Erection and endowing of Hoſpitals, *Meaſons de Dieu*, &c.
3 **Eliz. cap.** 5.
21 **Jac. 1. cap. 1.**
Made perpetual.

All Hoſpitals, *Meaſons de Dieu*, and abiding Places for poor, lame, maimed, and impotent Perſons; or for Houſes of Correction, erected by the Statute of the 39th of *Eliz. cap.* 5. or at any Time ſince founded, according to the Intent of that Statute, ſhall be incorporated, and ſhall have perpetual Succeſſion, and enjoy all other Privileges, as if founded within twenty Years enſuing the ſaid Act. F

A Proviſo not to aſſign a Term over without Licence, a Licence is obtained, the Condition is determin'd, as well to the Aſſignees as to the Leſſee.

A Proviſo was in a Leaſe, That the Leſſee and his Aſſigns ſhould not alien without the Leſſor's Licence, the Leſſor licences the Leſſee to let the Premiſſes, or any Part thereof, for the whole Term, to any Perſon; Leſſee aſſigns it to *A.* who deviſes it to his Executor, who aſſigned over: And adjudged, that by this Licence the Condition is diſpenſed withal as well in the Caſe of the Leſſee, as of all the others who aſſigned after him. *Cro. Eliz.* 815. *pl.* 5. G

A **A Copyholder** for Life hath a Licence to make a Leaſe for three Years, if he ſhall live ſo long; he leaſes for three Years without Limitation; this is no Forfeiture, becauſe the Law makes ſuch a Limitation to the Eſtate, *viz.* That it ſhall continue but for his Life; but had it been a Copyholder in Fee, it had been a Forfeiture, becauſe he does more than he was licenſed to do, *Popham* 105.

A Licence to a Copyholder for Life to leaſe for three Years, if he ſhould ſo long live, he leaſes abſolutely; it is no Forfeiture. And why. Otherwiſe in the Caſe of a Copyholder in Fee.

B **Where** the Law gives a Man a Licence to do a Thing, he muſt plead it in Treſpaſs, and cannot give it in Evidence upon Not Guilty. *Mod. Caſes* 69.

Where the Law gives a Licence it muſt be pleaded: For *non Cul.* will not do.

C **A Licence** is a perſonal Liberty or Authority to the Party to whom it is given, and cannot be transferred over. 12 *H.* 7. 25. 18 *Ed.* 4. 14.

A Licence is not transferrable over.

D **If** the Lord licence his Copyholder to let for twenty Years, he may demiſe for any Term under twenty Years. *Cro. Eliz.* 535. See Title **Copyhold.**

A Licence to let for twenty Years, is good for ten Years.

E **A Licence** is in Law a Diſpenſation, and ſuſpends a Condition. 4 *Rep.* 119.

A Licence ſuſpends a Condition.

F **If** a Leſſor licences his Leſſee (who is reſtrained by Condition from aliening without Licence) to alien, and the Leſſor dies before he aliens, this is no Countermand of the Licence; for the Licence excepts the Leſſee out of the Penalty of the Condition: *Co. Litt.* 52. *b.* So alſo it is if the Leſſor grants over his Eſtate. *Cro. Jac.* 103. *Danv.* 1. *part* 670.

A Licence not countermanded by Death, nor by granting over of the Eſtate.

G **A Bailiff** can't give Licence to commit a Treſpaſs, as to cut down Trees, nor can accept Amends for a Treſpaſs; yet he may make a Leaſe at Will, reſerving Rent, becauſe for his Maſter's Profit: So he may licence to go over his Maſter's Land for Recompence. *Cro. Jac.* 377. *pl.* 4.

A Bailiff cannot give a Licence to commit a Treſpaſs, but he may licence to go over his Maſter's Ground for a Recompence.

H **He** who hath a ſtinted Common cannot licence another to put in his Beaſts in his Stead, but by Deed. *Cro. Jac.* 575.

Where a Licence muſt be by Deed.

I **A Licence** to occupy is a Leaſe, ſays my Lord *Hobart*, *fol.* 35. But, ſays he, 10 *Eliz.* *fol.* 4. *pl.* 7. ſeems to make a Doubt, that the Licenſer may alſo occupy with him.

Licence to occupy is a Leaſe: But *quære* whether the Licenſer may not occupy with him.

K **A Letter** of Licence is not pleadable in Bar. *Carthew* 64.

L **Where** 'tis a Defeaſance and pleadable in Bar. *Ibid.* 210.

Limitation of Actions.

See Title **Statute of Limitation of Actions.**

Limitations of Actions, what.

Limitation of Actions is an Aſſignment of a Space of Time, within which he that will ſue for any Lands or Hereditaments, ought to prove that he or his Anceſtor was ſeiſed of the Thing demanded, otherwiſe he cannot maintain his Actions: Alſo, there is a Statute made in the Time of King James I. **for the Limitation of Perſonal Actions. Which ſee in Title** Statutes. A

Limitation of concealed Lands from the Crown ſhall not be recovered, unleſs the Title within ſixty Years.
21 **Jac.** 1. **cap.** 2.

By an Act made 21 *Jac.* 1. *cap.* 2. intituled, *An Act for the general Quiet of the Subject againſt all Pretences of Concealments whatſoever,* it is enacted, That concealed Lands ſhall not be recovered, unleſs it can be proved, that the King had Title to them within ſixty Years. B

Where the Word *Heirs* is a Word of Limitation, and where a Word of Purchaſe.

It is an antient Landmark of the Law, That when the Anceſtor takes an Eſtate for Life, the Word *Heirs* is a Word of Limitation; but otherwiſe it is a Word of Purchaſe. *Raym.* 334. C

The Limitation of Preſcription in a Writ of Right.
32 **H.** 8. **cap.** 2.

No Perſon ſhall have any Writ of Right, or make any Preſcription, Title, or Claim to any Lands, *&c.* of the Poſſeſſion of his Anceſtors, but only of a Seiſin of his Anceſtors, within ſixty Years next before the *Teſte* of the Writ, or ſaid Preſcription, Title or Claim. D

When an Aſſize of *Mort d'anceſtor*, Couſinage, Ayel, Entry *Sur diſſeiſin*, may be brought.

That no Perſon ſhall have an Aſſize of *Mort-d'aunceſter*, Couſinage, Ayel, Writ of Entry *Sur diſſeiſin*, for any Lands, *&c.* but only of a Seiſin of his Anceſtor within fifty Years next before the *Teſte* of the Writ. *S.* 2. E

When for Lands of his own Poſſeſſion.

Nor for Lands of his own Poſſeſſion above thirty Years. *Sect.* 3. F

When Formedons.

Formedons in Reverter and Remainder within fifty Years. G

A **They** ſhall be barred for want of Seiſin within thoſe Times. *Sect.* 6.

Barred for want of Seiſin.

B **Several** Proviſo's in this Statute to relieve Feme-Coverts, Perſons beyond Sea or in Priſon, and Infants, and the Heirs of all thoſe Perſons. *Sect.* 8, 9.

Proviſo for Feme-Coverts, Infants, Perſon beyond Sea, or in Priſon, and their Heirs.

C **When** the Statute ſhall commence againſt a Priſoner. *Comberb.* 26.

Priſoner.

D **The** Defendant may plead the Statute of Limitations where he was beyond Sea the whole Time, *&c. Ibid.* 190.

Beyond Sea.

E **Where** *non aſſumpſit infra ſex Annos* is pleaded to a Declaration of an Aſſignee of Bankrupts, the ſix Years ſhall be accounted from the original Cauſe of Action. *Ibid.* 70.

Bankrupts.

F **If** *A.* dies inteſtate, and Adminiſtration is at firſt committed to one, and a Stranger receive Money, and then Adminiſtration is granted to another, the ſix Years ſhall be accounted from the firſt Adminiſtration. *Ibid.* 311.

When the Time of Limitations ſhall commence from.

G **When** the Defendant's being beyond Sea does not avoid the Statute of Limitations, *contra* of the Plaintiff. *Salk.* 421.

Beyond Sea.

H **And** in a Replication to avoid that Statute, Continuances muſt be ſhewn. *Ibid.*

Continuances.

I **Where** an Action is removed by *Habeas Corpus*, and that Statute pleaded above, the Plaintiff may reply, the Suit below was within ſix Years. *Salk.* 424.

Habeas Corpus.

K **Pleas** of the Statute of Limitations are not to be favoured. *Ibid.* 421.

Such Pleas are not to be favoured.

L **Yet** *Quære*, if the Statute be pleadable to a Suit in the Admiralty for Mariners Wages. *Ibid.* 424.

Mariners Wages.

M **Not** guilty within ſix Years is ill in Treſpaſs, being limited to four. *Ibid.* 423, 424.

Non cul. infra ſex annos.

N **Where** the Duty ariſes on a Conſideration executory, the Defendant muſt plead *quod actio accrevit, &c. Ibid.* 422.

Actio non accrevit.

O *A.* receives the Inteſtate's Money, and afterwards Adminiſtration is committed to *B.* the Cauſe of Action accrues by the Adminiſtration. *Ibid.* 421.

When the Cauſe of Action accrues.

P **Twenty** Years Poſſeſſion is a good Title in Ejectment for the Plaintiff, as well as the Defendant. *Ibid.*

Title in Ejectment.

Q **The** Statute of Limitations runs not againſt an Heir, unleſs actually ouſted or diſſeiſed. *Ibid.* 423.

Heir.

R *A.* barr'd in his *Formedon* may take Advantage of a Right of Entry. *Ibid.* 422.

Formedon.

Evidence. **Where** the Statute of Limitations ſhall not be given in Evidence, and where it ſhall. 3 *Salk.* 154. A

Plea. **Where** *non aſſumpſit infra ſex annos* is a good Plea. *Ibid.* 227. B

Where the Statute is not well pleaded. *Ibid.* C

What will revive the Action. **Where** a new Promiſe or Acknowledgment will revive the Action. *Ibid.* 228. D

Bill of Exchange. **The** Statute of Limitations is a good Plea to an Action of Debt brought on a Bill of Exchange. *Carthew* 3. 226. E

Plea. **Where** it is a good Plea in other Actions, and where 'tis not a good Plea. *Ibid.* 136. F

Attorney's Fees. **Where** it was pleaded to an *Indebitatus Aſſumpſit* for Attorney's Fees. *Ibid.* 144. G

Account. **Where** it was pleaded to an Account brought by an Adminiſtrator, adjudged he ſhall have ſix Years next after the Adminiſtration granted. *Ibid.* 335. H

What revives the Debt. **Where** a conditional Promiſe ſhall revive the Debt and bring it ought of the Statute of Limitations. *Ibid.* 471. I

Limitation of Eſtates.

See { **Conditions.**
Limitation of Actions.
Recovery. }

Limitation, what. **A Limitation is where an Eſtate is granted to another to hold until he ſhall do ſuch and ſuch Acts as are mentioned in the Deed; and if he ſhall do thoſe Acts, or any of them, then his Eſtate ſhall ceaſe without Entry.** K

Limitation of an Eſtate to commence after the Determination of a Fee-ſimple, is void in Law. **A Limitation** of an Eſtate to begin after the Determination of an abſolute Eſtate in Fee-ſimple, is a void Limitation in Law; for if the Law ſhould ſuffer ſuch a Limitation to be made, this would be to ſuffer Perpetuities to be made, which the Law abhors; yet a Limitation of an Eſtate, is a good Limitation: 19 *Apr.* 1650. *B. S.* For ſuch an Eſtate L

Eſtate in Fee may never take Effect, and ſo it is not an abſolute Eſtate in Fee-ſimple.

A No Condition or Limitation framed by the Party in his Deed can make one and the ſame Eſtate to ceaſe at one Time, as to one Perſon, and be *in eſſe* as to another; or to ceaſe at one Time and revive afterwards. *6 Rep.* 41.

No Limitation can make an Eſtate to ceaſe as to one, and to be *in eſſe* as to another.

B If a Limitation of an Eſtate in Lands be uncertain, ſuch a Limitation is not good in Law, but void: *Hill.* 22 *Car. B. R.* For the Law cannot tell what Conſtruction to make of ſuch Limitation, by Reaſon of the Incertainty of it, nor how to direct the Eſtate limited; and therefore the Eſtate ſhall remain as if there had been no ſuch Limitation. See *Cro. Eliz.* 216. and *Anderſon* 258.

If uncertain, it is void.

C There is a Difference between a Condition Precedent, annexed to an Eſtate ſubſequent to this Condition, and a Limitation ſubſequent annexed to an Eſtate preſently veſted: *Hill.* 22 *Car. B. R.* In reſpect of the Incertainty of the former Eſtate, which depends upon the Condition, and the Certainty of the later Eſtate which hath no Dependency upon the Limitation.

Difference between a Condition precedent, annexed to an Eſtate ſubſequent, and a Limitation ſubſequent annexed to an Eſtate preſently veſted.

D A Thing that is expreſly limited in a Will by plain Words, ſhall not be afterwards made incertain, by general Words which follow in the ſaid Will: *Hill.* 23 *Car. B. R.* For that were to encounter a Thing that is plain and certainly known with that which is obſcure and doubtful, and to make Doubts inſtead of clearing of them.

An expreſs Limitation in a Will cannot be made incertain by general Words in the ſame Will.

E It is an ancient Land-mark of the Law, that when the Anceſtor takes an Eſtate for Life, the Word *Heirs* is a Word of Limitation, but otherwiſe it is a Word of Purchaſe. *Raym.* 334.

Where the Word *Heirs* is a Word of Limitation, and where a Word of Purchaſe.

F The Words, *Quamdiu*, *dum*, and *dummodo*, are Words of Limitation: As if a Leaſe be made to a Woman *dum ſola fuerit*, or *dum caſte vixerit*, or *dummodo ſolverit talem redditum*, or *quamdiu ſolverit talem redditum*: In all theſe Caſes, if there be not a Performance according to the Limitation, it determines the Leaſe: But it is otherwiſe where Rent is reſerved upon Condition; for there is a Contract between the Leſſor and Leſſee, which cannot be determined without an Entry. *Vaugh.* 32. See *Co. Lit.* 244. *b.* 245. *a. Poph.* 25, 26. *Moore, fol.* 292.

What are Words of Limitation; and if there be not a Performance according to the Limitation, it determines the Eſtate: But a Condition doth not.

G A Man deviſes to his Wife for Life, upon Condition that ſhe educate his Children in Learning, Remainder to his youngeſt Son in Tail, Remainder in Fee to his eldeſt Son: The Condition is broken. The Queſtion was, Whether the Heir ſhall enter

Deviſe for Life upon Condition, Remainder over. Condition broken.

for the Condition broken, or the younger Son ſhall enter for the Breach of the Limitation? Or if the Condition be deſtroyed by the Limitation of the Remainder over?

Though Words of Condition, yet the Effect of a Limitation; and the Heir cannot enter.

A **Adjudged**, That they are expreſs Words of Condition, and not of Limitation: But the Heir at Law cannot defeat the Eſtate for Life, unleſs he defeat the Remainder; and therefore by the Limitation of the Remainder over, the Condition is deſtroyed. 10 *Rep.* 40, 41. *b.*

Where a Deviſe to the Heir at Law upon a Condition, ſhall be adjudged a Limitation.

B **Where** a Deviſe is to the eldeſt Son, upon Condition that he pays ſuch Legacies; and if he refuſes, the Land ſhall remain to the Legatees; he refuſes, the Legatees may enter by Way of Limitation. *Noy* 51.

Where a Condition, and where a Limitation.

C **In** all Caſes where after a Condition an Intereſt is limited to a Stranger, it is not a Condition, but a Limitation. 1 *Leon.* Caſe 362. *fol.* 269. See *Cro. Eliz.* 204. *pl.* 39.

The Nature of a Condition and of a Limitation.

D **The** Nature of a Condition is to draw back the Eſtate to the Feoffor, Donor, or Leſſor: But a Limitation carries the Eſtate farther. 1 *Leon.* Caſe 409. *fol.* 299. See Title **Condition.**

A Recovery will not deſtroy a Limitation of an Uſe upon Condition.

E **If** there be a Limitation of an Uſe upon Condition, and the *Ceſtuy que Uſe* ſuffers a Recovery: That will not deſtroy the Condition, the Eſtate being charged with it. 1 *Mod.* 109.

A Proviſo to hold the Land, ſo long as he ſhall pay the Rent, is a Limitation, and Non-payment avoids the Leaſe.

F **A Proviſo** in a Deed of Settlement, that the Plaintiff may leaſe for twenty-one Years at the ancient Rent, and perform their Conditions ſo long as their Leſſees ſhall pay the Rent: Theſe are Words of Limitation, and the Non-payment of the Rent determines the Term without a Demand. *Vaugh.* 32. *Moore*, 440.

Whether an Eſtate ſhall go to the Heir of the Huſband or Wife.

G *H.* ſeiſed in right of his Wife, the Huſband and Wife joined in a Fine, and declare the Uſes to the Heirs Male of the Body of the Huſband upon the Wife engendred, Remainder to the right Heirs of the Huſband, they have Iſſue a Son, who died without Iſſue; and if the Plaintiff who was right Heir to the Huſband, or the Defendant who was the Heir to the Wife, ſhall have the Land, was the Queſtion upon the Special Verdict, and adjudged for the Defendant; for it being limited to take Effect after the Death of the Huſband without Iſſue generally, and there not being any Eſtate to ſupport it, it is a future Uſe to take Effect upon ſuch a remote Poſſibility, as the Law will not allow. *Skin.* 351.

Where an Eſtate ſhall be raiſed to the Heir by Implication.

H **If** a Man covenants to ſtand ſeiſed to the Uſe of *J. S.* and his Heirs, after the Death of *J. D.* he continues ſeiſed in Fee, and no Eſtate altered during the Life of *J. D.* and if the Covenantor dies, this ſhall deſcend to his Heir; but if he covenants to ſtand ſeiſed to the Uſe of the Heirs Male of his Body, becauſe that no Deſcent may be to the Heir after his Death, the Law raiſes an Eſtate to him by Implication, and he does not remain ſeiſed in Fee during the Life; but this Eſtate is immediately put into an Eſtate-Tail. *Skin.* 352.

A **A Man** may limit a Future Eſtate upon a Contingent after a Death without Iſſue within the Compaſs of a Life. *Skin.* 352.

Livery and Seiſin.

See { **Feoffment.**
Leaſe for Life.
Remainders. }

Livery of Seiſin, what it is.

B **Livery of Seiſin is a Delivery of Poſſeſſion of Lands, Tenements, or other corporate Things, unto one that hath a Right thereunto: Being a Ceremony uſed in the Conveyance of Lands or Tenements, &c. where any Eſtate of Freehold in Houſes and Lands paſſeth; but not in Grants of Rents, Advowſons, &c. or any Thing which lies in Grant.**

Two Attorneys *conjunctim & diviſim*, one may make Livery in one Part, the other in another Part.

C **Where** a Letter of Attorney is *conjunctim & diviſim*, to enter into all the Premiſſes, here one Attorney may make Livery in one Parcel, and the other in another. 4 *Leon.* Caſe 310.

The Manner of delivering of it.

D **The** Manner of Delivery of Seiſin, is thus: If it be in the open Field where there is no Building or Houſe, then one preſent muſt take the Deed, and declare to the Standers-by the Cauſe of their Meeting there, and then read the Deed to them, or declare the Effect thereof, and then it muſt be ſealed; and the Party who ſeals the Deed, muſt take the Deed in his Hand with a Clod of the Earth, and a Twig or Bough, (if any there) and deliver the ſame to the Feoffee in the Name of Seiſin, according to the Effect of the Deed there read: But if there be a Dwelling-houſe or Building upon the Land, then this is done at the

When at the Houſe.

the Door, none being left at the ſame Time within the Houſe, (ſee *poſtea* for this Matter) and then it is delivered with the Ring of the Door.

Why it muſt be made at the Houſe.

A **Or** ſetting the Foot within the Door: For when a Houſe and Land are entirely demiſed, the Houſe is the Principal, and the Lands Acceſſory; and there the Livery muſt be made, and not upon the Land. 2 *Rep.* 31. *b.* 32.

How a Corporation muſt deliver it.

B **A Corporation** cannot make Livery and Seiſin to paſs away the Freehold Lands belonging to the Corporation, but they may make a Letter of Attorney to another, under their common Seal, to make Livery and Seiſin for the Corporation: *Mich.* 23 *Car. B. R.* For Livery and Seiſin muſt be made by one, and not by a Multitude; and a Corporation can do no Acts but under their common Seal.

Feoffment of Land, *Habend' a die datus*, Feoffor gives Livery the next Day after the Date, and good: Otherwiſe had it been by Attorney.

C **If** a Deed of Feoffment be made of Land, *Habendum a die datus*, and the next Day after the Date of the Deed, the Feoffor gives Livery and Seiſin of this Land, this is a good Livery and Seiſin; but if this Livery and Seiſin were made by an Attorney, *Nil operatur*. *Mich.* 23 *Car. B. R. Hob.* 314. A Thing that is to take Effect *a die datus*, is not to take Effect until the next Day after the Deed bears Date; but where it is *Habendum a dat.* or *a confectione Indenturæ*, there it commenceth preſently.

A. leaſes to *B.* for Life, *Habend' a die confectionis*, and gives Livery a Month after: Good, becauſe given by himſelf.

D *A.* makes a Leaſe to *B.* for Life, *Habendum a die confectionis*, and Livery is made by *A.* himſelf a Month after; and it was there held, that the Livery was good, it being made by the Feoffor himſelf; but if it had been executed by Letter of Attorney, *Nil operatur* by this future Livery. *Smith* and *Bole*'s Caſe, *Cro. Jac.* 458.

Parol Authority to take Livery; good if taken accordingly.

E **One** may give Authority by Parol unto another to take Livery and Seiſin of Lands for him; and if ſuch Livery and Seiſin be taken accordingly, it is good: By *Rolle* Chief Juſtice, *Mich.* 1650. *B. S.* For this ſhews his Aſſent to take the Lands by the Livery and Seiſin, and the other is but as a Conduit-pipe to convey the Land unto him from the Feoffor.

Plea *quod J. S. Feoffavit*, good without pleading Livery, and why.

F **Where** a Man pleads *quod J. S. feoffavit* him, he need not plead it to be with Livery, becauſe to every Feoffment a Livery is implied. 8 *Rep.* 82.

A Letter of Attorney to make Livery, recites the Feoffment, and miſtakes the Date, it is void.

G **A Letter** of Attorney to make Livery, recites the Feoffment to bear Date *September* 10, whereas it was *September* 11, and Livery being made accordingly, the Livery for that Miſtake of the Date was adjudged to be void. *Cro. Eliz.* 603. *pl.* 17.

A Letter of Attorney and Livery ſupplied.

H **A Letter** of Attorney and Livery ſupplied in Equity. *Chanc. Rep.* 241.

A **Where** a Man ſeized of an Houſe and Land ſealed a Feoffment, and deliver'd it to the Feoffee, for and in the Name of *Seiſin of the Houſe*, and all the Reſidue of the Lands and Tenements contained in the ſaid Writing: Here this amounted to two ſeveral Acts at one and the ſame Time, *viz.* to the Delivery of the Writing as a Deed, and to the Delivery of Seiſin of the Land according to the Deed. 9 *Rep.* 138. *a.*

Where Delivery of the Deed upon the Land amounts to both Delivery of the Deed, and alſo Livery.

B **A Man** cannot make a preſent Livery to a future Eſtate. 5 *Rep.* 94. *b.* 95, *&c.* See Title **Leaſes** and **Habendum.**

There cannot be a preſent Livery to a future Eſtate.

C **A Feoffment** is made in Fee, *Habend.* after the Death of the Feoffor, and Livery is made upon it: This is void, being *in futuro. Cro. El.* 254. *pl.* 27, 255.

A Feoffment *Habend.* after the Feoffor's Death is void.

D **A Leaſe** for Life, *Habendum* from *Michaelmas* next, and Livery by Attorney after *Michaelmas*, is void; but if it be by the Grantor, it will be good; but if it be before, it will not. 2 *Bulſt.* 303. 2 *Rep.* 55. *Cro. Eliz.* 255, 585. 5 *Rep.* 94, 95.

Where Livery is made to a future Eſtate by Attorney, and where by the Grantor.

E **If** a Tenant for Years of Lands do conſent, that Livery and Seiſin be made unto him that hath purchaſed the Reverſion of thoſe Lands let unto him, or be Witneſs to the Deed and Livery: This is a good Livery and Seiſin to make the Reverſion paſs, although the Tenant for Years do not go off from the Land at the Time when the Livery and Seiſin was made, but was then in actual Poſſeſſion of it: For the Tenant's Term is not hurt, and his Aſſent amounts but to an Attornment.

Livery made by the Aſſent of the Tenant for Years.

F **But** where a Leſſor enfeoffs a Stranger and comes to make Livery, the Leſſee's Wife being upon the Houſe; the Leſſor enters, and by Force turns the Leſſee's Wife againſt her Will into the Backſide, which was part of the Land let, and then he makes Livery in the Houſe, in the Name of all the Lands let; and becauſe the Woman remained all the while upon the Land, and contradicted the Livery, the Livery was void; but if ſhe had voluntarily gone out of the Houſe, altho' ſhe remained upon Part of the Land, it had been good: So alſo if the Leſſor had turned her out into the Street by Force, ſo that ſhe had not been upon any part of the Land, it had been good. *Daliſon* 94. *pl.* 18.

Where Livery is made againſt the Tenant's Wife's Conſent, where it is good, and where not.

Where void.

Where good.

G **Where** the Leſſor and Leſſee are upon the Land, the Leſſee may make a Feoffment and deliver Seiſin, becauſe he had the ſole Right to the Poſſeſſion of which the Livery is to be made. *Cro. Eliz.* 321. *pl.* 10. 322.

Leſſee makes a Feoffment and delivers Seiſin, the Leſſor being upon the Land, yet the Livery good.

H **If** the Leſſor makes Livery, the Leſſee being upon the Land and contradicting of it, it is void. *Ibid.*

But where the Leſſor makes it, the Leſſee being upon the Land, and contradicting of it, it is void.

So alſo when Livery is made where the Lands are in the Hands of Tenants.

A **And** as to other Part, which was in the Hands of ſeveral Tenants when the Livery was made, nothing paſſed. *Cro. Eliz.* 322.

Leſſee for Years, Remainder in Fee, enters before Livery, the Remainder is void; ſo if the Leaſe be to commence *in futuro.*

B **A Leaſe** for Years, Remainder in Fee; Tenant for Years enters before Livery, his Term is good, but the Remainder is void: But if the Leaſe be to commence at *Michaelmas* next, Remainder in Fee, although the Leſſor make Livery to the Leſſee, yet the Livery and Remainder are void; becauſe there was no preſent Eſtate to which the Livery could be annex'd. *Throckmorton* and *Tracy*, *Plow.* 156. and 25. *a.*

Where a Remainder to one not *in eſſe* is void. Every Livery ought to operate preſently.

C **A Leaſe** for Years to *B.* remainder to his right Heirs and makes Livery; the Remainder is void, becauſe there is not any Perſon *in eſſe* who can preſently take by the Livery; and every Livery ought to have its Operation preſently. 4 *Leon.* Caſe 67.

Where there is a Power to leaſe for Life, ſuch Leaſe is good without Livery.

D **If** there be Tenant for Life with Power to make Leaſes for Life, and the Tenant for Life leaſes for Life, it is good without Livery; nay, and better than with it. 2 *Lev.* 156.

A Fine *ſur conceſſit* is well executed by Attornment.

E **By** the Attornment of Tenant for Years, a Fine *ſur conceſſit* is executed, and the Eſtate as well veſted, as if by Livery. *Ibid.*

Cannot be made of running Water, but it may of ſtanding Water.

F **Livery** cannot be made of running Water, becauſe it is fugitive; but it may be of Water in a Standing Pool. 4 *Leon.* Caſe 374.

London.

See **By-Laws.**
Certiorari.
Courts.
Cuſtoms.

London, what.

G London **is the chiefeſt City in all** England, **and as well ſituated, and as famous for Trade, as any City in the World.**

A **No** Perſon not being a Freeman of *London*, can by any Colour, Ways or Means, keep any Shop, or other Place, inward or outward, to ſhew or put to Sale by Retail, or uſe any Handicraft Trade for Hire, Gain or Sale, within the City of *London*, upon Forfeiture of 5 *l.* which was held to be a good Conſtitution, it being by Cuſtom; but it had not been good by Grant. 8 *Rep.* 124, 125.

No Perſon to keep a Shop in *London* but a Freeman.

B **There** are but three Ways to be a Freeman of *London*.

Freeman of *London*, how to be made.

I. By Servitude.
II. Birthright, as the Son of a Freeman.
III. By Redemption, *viz.* By Order of the Court of Aldermen. 8 *Rep.* 126. *b.*

C **By** the Cuſtom of *London*, any one that uſeth buying and ſelling, may uſe any other Trade of buying and ſelling; but one brought as an Apprentice in the Trade of a Goldſmith, Cutler, *&c.* being a Freeman of *London*, cannot by Colour thereof, uſe any other manual Trade. *Cro. Car.* 361 *&* 516. *pl.* 17. 517. *Co. Lit.* 74. *a.*

How the Cuſtom of *London* is for uſing of Trades not brought up unto.

D **A Citizen** of *London* was committed to *Newgate* by the Lord Mayor and Court of Aldermen, for refuſing to accept the Livery. See the Caſe upon the Return of the *Habeas Corpus*. 5 *Mod.* 151 to 162.

A Citizen committed to *Newgate* for not accepting of the Livery.

E **The** City of *London* ſhall have all their ancient Uſages, Liberties, and Cuſtoms, which they have been uſed to have. See 2 *Inſt.* 20.

London ſhall have all her ancient Privileges and Cuſtoms.
Magna Charta, *cap.* 9.

F **A Citizen** of *London* ſhall recover in an Aſſize, Damages with his Land.

He ſhall recover his Land with Damages.
6 **E.** 1. **cap.** 14.

G **Where** one impleaded in the Huſtings in *London*, voucheth a Foreigner to Warranty, how the Proceedings ſhall then be.

How to proceed where one impleaded in *London* voucheth a Foreigner.
6 **E.** 1. c. 12. & 9 **E.** 1.

H Several Orders about Apprentices. See the Statute at large.

Orders about Apprentices. 5 **Eliz. cap.** 4.

I **A Citizen** of *London* cannot deviſe his Child's Part over to another, in Caſe the Child dies in his Minority. *Chanc. Rep.* 199.

A Citizen cannot deviſe over his Child's Part, in Caſe he dies in his Minority.

K **Where** a Bond or Promiſe reſtrains the Exerciſe of a Trade, although to a particular Place only; yet if there was no Conſideration for it, it is void: But if there was a Conſideration, as aſſigning of a Shop, or taking off braided Wares, *&c.* there it is good. *Aleyn* 67. See in Title **Condition**. But if the Reſtraint be general throughout *England*, though there be ſuch a Conſideration, it is void.

Where a Bond to reſtrain Trade is good, and where not.

L **No** Conſtitution or By-Law can be made, upon Pain of Impriſonment. 8 *Rep.* 127. *b.*

The Antiquity of *London*.

Of the Antiquity of the City of *London*, being a famous City in *Nero*'s Time, which was above 1600 Years ago. See 8 *Rep.* 130. *a.* A

In Pleading, *London* muſt be ſaid to be *Antiqua Civitas*.

To ſet forth a Uſage in the City of *London*, and doth not ſay, That it is *Antiqua Civitas*, it is naught. 2 *Leon.* 120. *fol.* 99. B

Brewers, *&c.* for their own Uſe, are out of the Cuſtom, and 5 Eliz. cap. 4.

Brewers, Bakers, Tallow-Chandlers, *&c.* who do it for their own private Uſe, and not to ſell, are out of the Cuſtom of *London*, and 5 *Eliz. cap.* 4. 8 *Rep.* 129, 130. C

Feme Sole Merchant.

Of a Feme Sole Merchant in the City of *London*. See *Comb.* 42. D

City cannot ſet a Fine.

The City of *London* cannot ſet a Fine, *&c.* for Non-performance of a By-Law. *Ibid.* 10. E

Procedendo.

Yet ſee where a *Procedendo* was granted to the City of *London* for trying their Juriſdiction in Debt on a By-Law. *Ibid.* 68. F

Foreign Attachment.

Money in the Hands of the Ordinary, or an Attorney, is not liable to a Foreign Attachment. *Ibid.* 347, 427. G

What the Garniſhee can't plead.

The Garniſhee in a Foreign Attachment cannot plead to the Juriſdiction of the City after an Imparlance. *Ibid.* 109. H

Habeas Corpus.

Where an Action is founded on a By-Law, 'tis uſual on a *Habeas Corpus* to return the By-Law. *Ibid.* 139. I

Not uſual to return the Cuſtom.

But not uſual to return the Cuſtom where the Suit is grounded on the Cuſtom (*ut dicit*) *Ibid.* K

The like.

As in an Action for calling a Woman Whore, *&c.* founded on the Cuſtom of the City. *Ibid.* L

Dancing-Maſters.

See a By-Law for obliging Dancing-Maſters to be of the Company of Muſicians. *Ibid.* 372, 73. M

Cuſtom of chooſing Livery-men.

See their Cuſtom of chooſing Livery-Men, *&c.* and impriſoning the Refuſers. *Ibid.* 411. N

City Lights.

The Court of Aldermen's Power concerning new Lights was only during rebuilding of the City. *Salk.* 425. O

To puniſh Contempts, and to Diſfranchiſe.

The Cuſtom to puniſh by Information in the Court of Aldermen for an Aſſault and contemptuous Words of an Alderman is good, *aliter*, if to diſfranchiſe. *Ibid.* P

Executor to place an Apprentice.

By the Cuſtom of *London* an Executor ſhall place the Teſtator's Apprentice with another Maſter, *&c.* *Ibid.* 66. Q

Freemens Eſtates.

The Cuſtom there concerning Freemens Eſtates extends only to Children, not to Grand-children. *Ibid.* 426. R

A **So** the Cuſtom of Hotchpot there, and where it appears under the Father's own Hand, how much a Child has receiv'd, the Court will judge if a full Advancement, or not. *Salk* 426.

Cuſtom of Hotchpot.

B **Mayor** or Commonalty of *London* may limit Penalties of a By-Law to themſelves, but they cannot be ſued for in the Mayor's Court. *Salk.* 397, 398.

What not to be ſued for in the Mayor's Court.

C **See** the Difference between *London* and other Cities as to the Cuſtom *Gilda mercatoria.* *Salk.* 204.

Gilda Mercatoria.

D **By** a Clauſe in an Act of 11 *Geo.* 1. it is thus provided: And to the Intent that Perſons of Wealth and Ability, who exerciſe the Buſineſs of Merchandize, and other laudable Employments, within the ſaid City, may not be diſcouraged from becoming Free of the ſame, by Reaſon of the Cuſtom reſtraining the Citizens and Freemen thereof from diſpoſing of their Perſonal Eſtates by their laſt Wills and Teſtaments: Be it further enacted by the Authority aforeſaid, That it ſhall and may be lawful to and for all and every Perſon and Perſons, who ſhall, at any Time from and after the ſaid firſt Day of *June*, 1725, be made, or become Free of the ſaid City, and alſo to and for all and every Perſon and Perſons, who are already Free of the ſaid City, and on the ſaid firſt Day of *June*, 1725, ſhall be unmarried, and not have Iſſue by any former Marriage, to give, deviſe, will, and diſpoſe of his and their Perſonal Eſtate and Eſtates, to ſuch Perſon and Perſons, and to ſuch Uſe and Uſes as he or they ſhall think fit; any Cuſtom or Uſage of or in the ſaid City, or any By-Law or Ordinance made or obſerved within the ſame, to the contrary thereof in any wiſe notwithſtanding.

Freemen made after 1 *June*, 1725, may diſpoſe of their Perſonal Eſtate as they think fit.

E Provided neverthele ſs, That in caſe any Perſon who ſhall at any Time or Times, from and after the ſaid firſt Day of *June*, 1725, become Free of the ſaid City; and any Perſon or Perſons, who are already Free of the ſaid City, and on the ſaid firſt Day of *June*, 1725, ſhall be unmarried, and not have Iſſue by any former Marriage, hath agreed, or ſhall agree, by any Writing under his Hand, upon or in Conſideration of his Marriage, or otherwiſe, that his Perſonal Eſtate ſhall be ſubject to, or be diſtributed or diſtributable according to the Cuſtom of the City of *London*; or in Caſe any Perſon ſo Free, or becoming Free as aforeſaid, ſhall die inteſtate, in every ſuch Caſe the Perſonal Eſtate of ſuch Perſon ſo making ſuch Agreement, or ſo dying inteſtate, ſhall be ſubject to, and be diſtributed and diſtributable according to the Cuſtom of the ſaid City; any thing herein contained to the contrary in any wiſe notwithſtanding.

Exception.

And ſee the Act quite through which relates to the regulating Elections within the City of *London*.

Lunatick.

See **Non Compos Mentis.**

A Lunatick, what.

A Lunatick is a Perſon who is ſometimes of good and ſound Memory, and ſometimes not. A

Lunaticks muſt bring Actions in their own Names.

Actions for a Lunatick's Lands muſt be brought in his own Name: Neither hath the Lord any Power over, or can grant the Cuſtody of a Lunatick's Land without a ſpecial Cuſtom. *Hob.* 215. B

A Lord cannot grant the Cuſtody of their Lands without Cuſtom.

And the Lord's Committee is no more than as Bailiff, and hath no Intereſt. *Hutton* 16. C

Who muſt keep the Lunatick, his Wife and Children, out of the Profits of his Lands.

The King is bound to keep the Lunatick, his Wife and Children out of the Profits of his Lands, and to take nothing for his own Uſe: And what elſe he may do, ſee the laſt Caſe in *Rep.* 4. D

The Power of the Committee of a Lunatick.

The King hath not an Intereſt in the Lands of a Lunatick, but can only commit them to the Care of another, and ſuch Committee is accountable to the Lunatick if he recovers, and to his Executors if he dies; and by the Death of the Committee the Grant is determined. *Skinner* 138, 177. E

Of a Lunatick from his Birth, and the King's Power.

Where one is a Lunatick *a Nativitate*, the King has an Intereſt in his Lands, and ſhall receive the Profits to his own Uſe, or grant them to another, and ſuch Grantee is not liable to account, but only to maintain the Ideot and his Family. *Ibid.* F

Maihem.

Maihem.

See **Judgment.**

A **Maihem ſignifies a corporal Hurt, whereby a Man loſeth the Uſe of any Member, that is or may be any Defence to him in Battle; as the Eye, the Hand, the Foot, Scalp of the Head, Fore-Tooth, or, as ſome ſay, any Finger or Toe.** Glanv. Lib. 14. cap. 7.

Maihem, what.

B **A Recovery** in an Action of Aſſault, Battery, and Wounding, is a good Plea in Bar of Appeal of Maihem. 1 *Leon.* Caſe 447. *Moore*, Caſe 419.

A Recovery in Battery is a good Bar to an Appeal of Maihem.

C *De eo quod ipſe*, &c. *die*, &c. *anno*, &c. *vi & armis, videlicet, gladiis, baculis, cultellis & ſcalpris*, (viz. The Thing wherewith the Maihem was committed) *in ipſum quer. apud* S. *in Com. præd. inſultum fecit & ipſum quer. adtunc & ibidem verberavit, vulneravit, maihemiavit, & maletractavit, ita quod*, &c. *& alia enormia*, &c.

Declaration in Maihem.

D Note, *Son Aſſault* is a good Plea to this Declaration.

Plea to it.

E **Upon** an Appeal of Maihem againſt three, two plead in Abatement, and to the Felony Not-guilty, the other Not-guilty; and held by the Court, That when one pleads in Abatement, and alſo in Bar, the Plea in Bar waves the Plea in Abatement, unleſs where the Life is in Jeopardy, in Caſe of Felony, and that is *in favorem vitæ*. *Cro. Eliz.* 495. *pl.* 14.

A Plea in Abatement and Not-guilty cannot be pleaded in Appeal of Maihem.

It is only allowed in Felony, *&c. in favorem vitæ*.

F **By** an Act made 22 & 23 *Car.* 2. *cap.* 1. it is enacted, That if any Perſon on Purpoſe, and of Malice forethought, and by lying in wait, ſhall unlawfully cut out the Tongue, put out an Eye, ſlit the Noſe, cut off a Noſe or Lip, or cut off or diſable any Limb or Member of any of His Majeſty's Subjects, with Intention in ſo doing to maihem or disfigure any of His Majeſty's Subjects; the Perſon ſo offending, their Counſellors, Aiders, and Abettors, privy to the ſaid Offence, are hereby declared to be Felons, without Benefit of Clergy.

Malicious maiming made Felony without Clergy.

22 & 23 **Car. 2. c. 1.**

Their Counſellors and Abettors are equally guilty.

No

No Corruption of Blood or Forfeiture upon ſuch Attainder.

No Attainder of ſuch Felony ſhall corrupt the Blood, or forfeit Dower of the Wife: Or the Lands or Goods of the Offender. A

Maintenance.

See { **Champerty.**
Embracery. }

Maintenance, what.

Maintenance, manutenentia, ſignifies the upholding of a Cauſe or Perſon; or the buying, ſelling, or obtaining of any pretended Rights or Titles to Lands, &c. See the Statute of 38 H. 8. cap. 9. and Co. Litt. 368. b. 369. a. B

Againſt Maintenance, Embracery, and Champerty, and buying of litigious Titles.
32 H. 8. c. 9. Sect. 2.

All Statutes concerning Maintenance, Embracery, and Champerty, ſhall be put in Execution: Alſo, that no Perſon ſhall bargain, buy, or ſell, obtain or get any pretended Right or Title; or take, promiſe, grant, or covenant to have any ſuch Title: Except the Perſon who ſhall ſo ſell or contract, and his Anceſtors, or he under whom he claims, have been in Poſſeſſion thereof, or of the Reverſion or Remainder thereof; and have received the Rents and Profits thereof for one whole Year next before ſuch Bargain, Sale, *&c.* upon Pain to forfeit the whole Value of the Lands ſo ſold or granted contrary hereunto, the one Half to the King, the other to the Party who will ſue for the ſame. *Sect.* 2. C

Where it is lawful to buy a pretended Title.

Purchaſing of a pretended Title by him who is in Poſſeſſion, by taking of the Rents and Profits, is lawful. *Sect.* 4. D

Againſt unlawful maintaining of Suits, embracing of Jurors, *&c.*

Unlawful maintaining of a Suit in any of the King's Courts, which determine any Title of Lands; or ſuborning of any Witneſſes concerning the ſame; or embracing any Freeholders or Jurors, ſhall forfeit 10 *l.* one Moiety to the King, the other to the Informer. *Sect.* 3. E

A Leaſe made by one who never was in Poſſeſſion, nor ſealed upon the Land, is Maintenance.
32 H. 8. cap. 9.

An Information was brought upon the Statute of 32 *H.* 8. *cap.* 9. of *Maintenance*, and the Matter appeared to be, That the Leſſor had a good Right, but never been in Poſſeſſion; and made a Leaſe, but did not ſeal and deliver it upon the Land: And adjudg'd to be within the Statute. 1 *Leon.* 166. Caſe 231. F

A **If** a Man be in Poſſeſſion, or hath received the Iſſues and Profits for one whole Year, and afterwards a Stranger enters upon him, and hath the Poſſeſſion for the Space of a Quarter of a Year, or half a Year, yet he who was in Poſſeſſion a Year before, may grant his Intereſt without Danger of the Statute. 3 *Leon.* Caſe 119.

Where a Man was in Poſſeſſion and another enters upon him, yet he may grant his Intereſt.

B **Where** Copyholders do all participate for Common, they may maintain the one the other. *Moore*, Caſe 764. 1088.

Where it is lawful for Commoners to contribute and join.

C **Where** there is a Cuſtom, That upon the Death of a Tenant for Life of a Copyhold, the Lord is compellable to make another Eſtate for Life to the elder Son, *& ſic imperpetuum*; here, for all the Copyholders to join in Suit, and contribute to the Charge where the Cuſtom is lawful, and they all claim in by that Cuſtom, is not Maintenance, but lawful; but where the Tenure is in Queſtion they muſt not join. *Moore*, Caſe 1088.

And where for Copyholders.

And where not.

Mandamus.

See Corporation.

D **A** Mandamus **is a Writ which iſſues out of the Court of King's Bench only, and is ſued out on the Crown-Office Side only, and is to command the reſtoring of a Perſon to his Place or Office from which he was turned out.** Vel cauſam ſignificare quare, &c.

Mandamus, **what.**

E **It** lies for a Fellow of the College of Phyſicians. 1 *Lev.* 19.

For whom it lies, and for whom not.

F **It** lies not for a Fellow of a College where there is a Viſitor. 1 *Lev.* 23. 2 *Lev.* 14.

G **It** lies to reſtore a Capital Burgeſs of a Corporation. 11 *Rep. Bagg's* Caſe.

H **It** lies not to elect a Man into an Office.

I **See** a *Mandamus* to reſtore a Burgeſs (turn'd out of his Place by the Corporation) with the Return of it, and ſeveral Exceptions taken to the Return, and allowed, and a peremptory *Mandamus* granted. 5 *Mod.* from 254 to 259.

To reſtore a Burgeſs turn'd out of a Corporation.

Lies not for a Deputy.

Although it lies not for a Deputy, yet it lies for A him who hath Power to make ſuch Deputy. 1 *Lev.* 306.

Lies for a Sexton. For a Steward of a Court-Baron.

It lies for a Sexton of a Pariſh, or a Steward of B a Court-Baron. 2 *Lev.* 18, 19.

Church-wardens join in an Action for a falſe Return.

Church-wardens join in an Action for a falſe C Return of a *Mandamus*, and held good. 3 *Lev.* 362, 363.

When Caſe lies for a falſe Return of it.

Caſe lies not for a falſe Return of a *Mandamus* D before there be Judgment upon the Return. 2 *Lev.* 238.

The Court has nothing to adjudge upon, till the Writ is returned and filed.

It was moved to quaſh a *Mandamus*, for that the E Clauſe, *Vel Cauſam nobis ſignificetis*, was left out, and therefore it was inſiſted upon, that it was a Peremptory *Mandamus*, which ought not to be, it being the firſt Writ.

But *per Curiam.* Firſt make a Return of your Writ, and then take F what Advantage you can of the Deficiency in the Writ: For until there is a Return, the Court hath nothing before them to adjudge upon. *Mich.* 8 *W.*

Where the Court ſhall grant a peremptory *Mandamus*, and how to be.

By Action for a falſe Return.

If a Corporation have Power by Charter or Pre- G ſcription to disfranchiſe, and the Court grants a Writ to reſtore him, *Vel Cauſam ſignificare*; and they certify a ſufficient, but falſe Cauſe; the Court cannot reſtore him, neither can Iſſue be taken thereupon; but there lies an Action for a falſe Return. And if it be found for him, then he ſhall have a Peremptory *Mandamus*: Or he may (if impriſoned) bring his Action of Treſpaſs and falſe Impriſonment: Or, if his Shop be ſhut up, bring Treſpaſs. 11 *Rep.* 99. *b.*

The Return muſt be certain.

Returns upon Writs of *Mandamus* muſt be cer- H tain, for the Court to adjudge upon. *Ibid.*

It lies for a Pariſh-Clerk.

It lies for a Pariſh-Clerk. *Bowden*'s Caſe, *Trin.* 8. I *Annæ*, *B. R.* See *Cro. Car.* 589. *pl.* 3.

When the Court will not grant a *Mandamus*.

If there be a Controverſy in the Spiritual Court, K Whether a Will or no Will? This Court will not grant a *Mandamus* until it be determined. 5 *Mod.* 373.

It lies for an Attorney of an Inferior Court.

It lies to reſtore an Attorney turn'd out of an L Inferior Court. 1 *Keble* 549. *pl.* 55. 558. *pl.* 78.

Lies not for a private Office.

It lies not for a Clerk of a Company it being a M private Office: But if he hath a Freehold he may have his Aſſize. *Mod. Caſes* 18.

What is a good Return, and what not.

Non fuit electus is a good Return; but *Non fuit* N *debito modo electus*, is not: 2 *Keble* 284. *pl.* 55. Becauſe *debito modo electus*, brings the Letters Patents in Queſtion. See alſo 1 *Keble* 733. *pl.* 11.

A **By** an Act of Parliament made 9 *Annæ Reginæ*, it is enacted, That where any Writ of *Mandamus* ſhall iſſue out of the Queen's Bench, Seſſions of the Counties Palatine, or Grand Seſſions in *Wales*; ſuch Perſon or Perſons who are by Law required to return the ſame, ſhall make his or their Return to the firſt *Mandamus*.

By the Act 9 Ann. a Return muſt be made to the firſt *Mandamus*.

B **That** as often as any ſuch Writ ſhall be iſſued out, and Return made thereto, the Perſon ſuing out ſuch Writ may plead to, and traverſe all or any the material Facts contained in ſuch Return, to which the Perſon making the Return, ſhall reply, take Iſſue, or demur; and ſuch further Proceedings, and in ſuch Manner ſhall be had for the Determination thereof, as might have been had, if the Perſon ſuing ſuch Writ had brought his Action for a falſe Return. And if any Iſſue ſhall be joined on ſuch Proceedings, the Perſon ſuing ſuch Writ may try the ſame in ſuch Place, as an Iſſue joined in ſuch Action, ſhould or might have been tried in; and if ſuch Perſon ſhall have a Verdict, Judgment upon a Demurrer, *Nil dicit*, want of Replication or other Pleading, he ſhall recover Damages and Coſts, as he might in ſuch Action on the Caſe, to be levied by *Ca. ſa. Fi. fa.* or *Elegit*. And a peremptory *Mandamus* ſhall be forthwith granted for the Perſon recovering ſuch Judgment; and if Judgment be given for the Defendant, then he ſhall have his Coſts.

Which may be traverſed.

And Pleadings to it.

And Iſſue may be joined and tried, or a Demurrer upon it; and if Judgment, then to recover Damages and Coſts, and a peremptory *Mandamus*: But if Judgment for the Defendant, he to have his Coſts.

C **That** where Damages are recovered by this Act, the Party ſhall not be ſued in any other Action for making of the ſaid Return.

Not to be ſued in any other Action if Damages are recovered upon this.

D **That** the ſaid Courts reſpectively ſhall allow to ſuch Perſon or Perſons to whom any *Mandamus* ſhall be directed, ſuch convenient Time to return, plead, reply, rejoin or demur, as ſuch Court ſhall think reaſonable.

The Courts may allow a reaſonable Time to return, reply, rejoin, or demur to ſuch Return.

E **Alſo** that the Act *For the Amendment of the Law*, made 5 *Annæ*, and all the Statutes of Jeofails ſhall be extended to Writs of *Mandamus*, and Proceedings upon them.

The Statute of Jeofails, 5 Ann. and all others of thoſe Statutes ſhall extend to them.

F **Whether** a *Mandamus* ought to be directed to the Mayor and Aldermen of *London*, or to the Court of Mayor and Aldermen of *London*, to ſwear a Sheriff, where the Cuſtom is to ſwear the Sheriff in the Court. *Skin.* 64.

To whom a *Mandamus* to be directed.

G **A** *Mandamus* was prayed by the Plaintiff, being a Proctor in the Arches, he being ſuſpended by the Defendant who was Dean of the Arches; it was returned that the Plaintiff was admitted a Proctor in the Arches, and took an Oath to obſerve the

Whether a *Mandamus* lies to the Court of Arches who ſuſpends a Proctor.

Laws and Canons of the Archbiſhop, *&c.* and ſhews a Breach of the Orders, *&c.* for which he was removed; it was much queſtioned whether a *Mandamus* lay; but it was adjudged that the Archbiſhop could not as a Viſitor examine the Proceedings of the Arches, for that wou'd be to appeal from an Act by one Authority to the ſame Authority. *Skin.* 290.

A *Mandamus* denied to ſwear in an Alderman who had taken the Oaths.

Sir *J. S.* prayed a *Mandamus* to be reſtored to the Office of an Alderman of the City of *London*, ſuggeſting that he was elected *ſecundum conſuetudinem, &c.* upon which it was returned that he was an Alderman as is ſuggeſted, but that he did not take the Oaths according to the Statute of 1 *Will.* and *Mary*, by which his Place became void; and adjudged, that notwithſtanding the Franchiſes of the City were forfeited by the Judgment in the *Quo Warranto*, yet that the Corporation remained *in eſſe*, and therefore tho' that Judgment was not reverſed till the Act of 2 *Will.* and *Mary*; yet by the Recital of the Judgment in the Act for Reſtitution of the City of *London*, Sir *J. S.* continued an Alderman after the Judgment in the *Quo Warratto*, and was therefore obliged to take the Oaths by the Act of 1 *Will.* and *Mary*, and they are to intend the Return to be true if poſſible; and a peremptory *Mandamus* was denied. *Skin.* 293, 310. A

That the Preſident, Fellows and Scholars, *&c.* of St. *John Baptiſt*, need not put their common Seal to the Return.

A Writ of *Mandamus* directed *Johanni Goar, Præſidi ſociis & Scholaribus, &c. Sancti Johannis Baptiſtæ*, they need not put their Common Seal to the Return; and it was indorſed *reſponſio Johannis Goar, &c.* according to the Direction of the Writ, it was held ſufficient, for the Return being filed, they are eſtopped to ſay it is not their Return, and if any other made it for them, they have an Action on the Caſe againſt them. *Skin.* 368. B

Where a *Mandamus* was denied for want of proper Parties.

The Court refuſed to grant a peremptory *Mandamus* to the Maſter of Saint *John*'s College, *&c.* to remove *A. B. C. &c.* Fellows of the College, for not taking the Oaths, becauſe they were not made Parties. *Skin.* 546. *abſque* 549. *Carthew* 169. C

Where an Attachment will go for not making a Return.

An Attachment may go for not making a Return to an *alias Mandamus*, tho' the Clauſe *vel cauſam nobis ſignificetis* be omitted, for they may except to the Writ after the Return; and till the Return the Court has nothing before them. *Skin.* 669. *Comberb.* 399. D

Where the Court may require a Return.

In extraordinary Caſes when the Court is ſatisfied of the Diſorder of the Place, they may require a Return to the *Alias Mandamus. Ibid.* E

Peremptory *Mandamus* after a Verdict.

Moved in *B. R.* for a peremptory *Mandamus* after a Verdict in *C. B.* the Court ſaid they could not take Notice here of a Verdict in *C. B.* and the Verdict ought to be in *B. R.* *Skin.* 67. F

A **It** lies to ſwear a Pariſh-Clark elected according to the Cuſtom. *Comberb.* 105, 106.

To ſwear in a Clark of a Pariſh.

C **So** to reſtore a School-Maſter or Pariſh-Clark. *Ibid.* 144.

D **So** to reſtore the Sword-Bearer of a Corporation. *Ibid.* 145.

Sword-Bearer.

E **So** to reſtore a Scholar of Saint *John*'s College, preſented by the City of *Briſtol*. *Ibid.* 238, 239.

A Scholar.

F **So** to reſtore a Clerk of the Company of Maſons. *Ibid.* 348.

Clerk of a Company.

G **So** to reſtore a Clerk of the Peace. *Ibid.* 317.

Clerk of the Peace.

H **So** to reſtore the Regiſter of a Biſhop's Court. *Ibid.* 265.

Biſhop's Regiſter.

I **So** to ſwear a Town-Clerk into his Office. *Ibid.* 245, 418.

Town-Clerk.

K **And** a Return by Way of Excuſe, that the Party is not qualified, is ill. *Ibid.* 419, 420.

Ill-Return.

L **So** to admit one to the Office of High-Bailiff of *Weſtminſter*. *Ibid.* 245.

High-Bailiff.

M **So** to Juſtices of Peace to give Judgment on the Statute for releaſing poor Perſons. *Ibid.* 202, 203.

To Juſtices of Peace.

N **So** to Pariſh-Officers, *&c.* to make Poor's Rates. *Ibib.* 420, 422, 478.

Poor's Rates.

O **So** to an Archdeacon to ſwear a Church-warden elected according to the Cuſtom of the Pariſh. *Ibid.* 417. *Carthew* 118, 393.

Church-warden.

P **So** to the Eccleſiaſtical Court to grant Adminiſtration to the next of Blood. *Comberb.* 450.

To grant Adminiſtration.

Q *Viz.* Where a Will is not, or diſputed. *Quere.* *Ibid.* 454.

Wills.

R **So** to the Spiritual Court to declare a Will proved *per teſtes*. *Ibid.* 89.

Spiritual Court.

S **But** it lies not where an Aſſize lies. *Ibid.* 347. *Vide* 244.

Aſſize.

T **Nor** for any Office that is not a publick Office. *Ibid.* 41.

Office.

U **Nor** for reſtoring a Surgeon to an Hoſpital. *Ibid.*

Surgeon.

X **Nor** for reſtoring a Water-Bailiff of the River *Severn*. *Ibid.* 347.

Water-Bailiff.

Y **Nor** for ſwearing a Steward of a Court-Baron. *Ibid.* 127.

Steward of a Court-Baron.

Z **Nor** for reſtoring the Clerk of a Dean and Chapter. *Ibid.* 133.

Clerk.

a **Nor** for their Regiſter, unleſs he has Eccleſiaſtical Juriſdiction. *Ibid.*

Regiſter.

b **Nor** for reſtoring a Fellow of a College. *Ibid.* 143.

Fellow of a College.

Fellow of a College.

A **Nor** for amoving Fellows of a College, on Suggeſtion they had not taken the Oath to the King. *Comberb.* 279. *Carthew* 92, 168.

Jury of *Clithero.*

B **Nor** to the Inquiry-Jury of *Clithero*, to preſent one to be a Freeman. *Comberb.* 239.

Alderman.

C **Nor** for reſtoring an Alderman who had abſented himſelf from the Corporation. *Comberb.* 197.

Spiritual Court.

D **Nor** for enforcing the Spiritual Court to grant Adminiſtration according to their Sentence. *Comberb.* 158.

The like.

E **Nor** to the Eccleſiaſtical Court to grant an Adminiſtration where a Will is in Queſtion. *Comberb.* 454.

Town-Clerk.

F *Quære,* If it lies to a Town-Clerk to deliver the Corporation Books. *Comberb.* 102.

To make a Rate.

G **Or** if it lies to compel Pariſhioners to make a Rate to reimburſe one on whom Pariſh Iſſues are levied, *&c.* *Comberb.* 257.

Common-Council Men.

H **See** a *Mandamus* to reſtore nine Common-Council Men of *Cheſter*, *&c.* *Comberb.* 214.

Where to be ſeveral Writs.

I **But** quaſhed becauſe there ought to have been ſeveral Writs. *Comberb.* 307, 308.

K **To** whom a *Mandamus* ſhall be directed. *Comberb.* 41, 102, 213, 327, 422.

Return.

L **By** whom it is to be returned. *Comberb.* 41, *&c.*

The like.

M *Quære* if the Return thereof by a Corporation is to be under the Hand and Seal of the Mayor, *&c.* or under the Common Seal. *Comberb.* 41, 42, 279, 324, 422.

Falſe Return.

N **An** Action for a falſe Return ought not to be in *B. R.* *Comberb.* 400.

Peremptory *Mandamus.*

O *Quære,* If Judgment be given on a Demurrer, whether a peremptory *Mandamus* lies. *Comberb.* 400.

The like.

P **After** what Trial a peremptory *Mandamus* lies. *Comberb.* 213.

Attachment.

Q **On** a *Mandamus* to a Corporation, the particular Defaulters are to be attached. *Comberb.* 327. *Vide* 213.

The like.

R **See** an Attachment for not returning a firſt *Mandamus.* *Comberb.* 234.

Return.

S **Objections** to a Return of a *Mandamus.* *Carthew* 173, 293.

Falſe Return.

T **Action** on the Caſe for a falſe Return of a *Mandamus.* *Carthew* 226.

Freedom.

V **To** admit an Apprentice to his Freedom. *Ibid.* 448.

A **To** Juſtices of Peace to ſign a Poor's Rate. *Carthew* 450.

Juſtices of Peace.

B **To** the Judge of the Prerogative Court to grant a Probate of a Will. *Carthew* 457.

Probate of a Will.

C **A Mandamus** directed to the Mayor, Bailiffs and Burgeſſes of, *&c.* and returned by the Mayor alone, is good. *Carthew* 459.

Return.

D **To** ſwear two Church-wardens, the Return was, that they were not *debite electi*, but did not ſay *nec eorum aliquis*, ill. 3 *Salk.* 162.

The like.

E **A Mandamus** denied to execute a Judgment in an Inferior Court, becauſe the Plaintiff hath another Remedy. 3 *Salk.* 229.

Inferior Court.

F **So** to reſtore a Serjeant at Mace. *Ibid.*

Serjeant at Mace.

G **Nor** to reſtore ſeveral Perſons jointly to their Offices, but each muſt have a ſeveral *Mandamus. Ibid.*

Separate Writs.

H **Denied** upon a ſuppoſed Failure of Duty in the Juſtices of the Peace, to remove a Man from a Pariſh after he had offered Security to indempnify the Pariſh; but if an Affidavit had been made of the Fact, it might have been granted. *Ibid.*

Juſtices of Peace.

I **It** muſt be directed to a Corporation by its proper Name. *Ibid.*

To whom directed.

K **Where** the Return is ill, and where the Cauſe of Removal is good. 3 *Salk.* 231.

Return.

L **Denied** to reſtored a Man to the Office of Clerk of the Butcher's Company in *London.* 3 *Salk.* 232.

Clerk of a Company.

M **A Mandamus** to admit an Executor to the Probate of a Will, that ſhe was no Executrix *durante minori ætate*, of *W. R.* who was now of full Age; not good. 3 *Salk.* 233, 162.

Return.

Manor.

See **Copyhold.**

A Manor, what.

A Manor is a Thing compounded of divers Things, as of an Houſe, Arable Land, Meadow, Paſture, Wood, Rent, Advowſon, Court-Baron, and ſuch like, which make a Manor; and this ought to be Time out of Mind: For at this Day a Manor cannot be made, becauſe a Court-Baron cannot now be made, and a Manor cannot be without a Court-Baron. A

One Manor holden by Copy of another, and may grant Copies.

A cuſtomary Manor may be held of another Manor by Copy, and ſuch a Lord may hold Courts, and grant Copies and Admittances. 11 *Rep.* 17. *a. b.* 18. *a. Cro. Jac.* 327. *pl.* 4. 260. B

One Manor upon a Partition, makes three Manors.

Three Copartners of a Manor make Partition, every of them ſhall have a Manor and a Court-Baron within her Purparty. *Dav. Rep.* 61. *b.* C

There may be a Manor out of a Manor to accept Surrenders, and grant Admittances.

A Lord of a Manor may ſever the Inheritance of the Copyholds of his Manor, and ſuch Severance doth not deſtroy the Copyholds; and ſuch Grantee may hold Courts for the cuſtomary Tenants, and accept Surrenders, and make Admittances; but he cannot hold a Court-Baron for want of Freeholders. 4 *Rep.* 26. *b.* D

Rent out of a Manor, how chargeable.

A Rent is granted out of a Manor, the Demeſnes only, and not the Services, are chargeable. 5 *Rep.* 4. *b.* E

What the Word *Manor* includes.

The Word *Manor* includes all Eſtates, and Degrees of Eſtates, of or in the Manor. 6 *Rep.* 56. *a.* F

A Manor in Reputation, will paſs in a Fine as a Manor.

A Manor in Reputation, and not in Verity, will paſs in a Fine as a Manor. 6 *Rep.* 63. *Contra, inter Mallet* and *Mallet. Cro. Eliz.* 524. *pl.* 53. But there it is ſaid, That though it ſhall not paſs in a Fine or Record, yet it ſhall in a Conveyance. G

What may be appurtenant to a Manor.

An Advowſon, a Rent, a Toll, or a Profit aprender, may be appurtenant to a Manor. 2 *Mod.* 144. H

A **No** Lands are Parcel of the Manor but the Demeſnes. *Lutw.* 1161.

What Lands are Parcel of a Manor.

B **A Warren** is not Parcel, nor any Member of a Manor, but may be appertaining to a Manor by Preſcription, *Cro. Eliz.* 547, *pl.* 21.

A Warren is not Part of a Manor, but may appertain to it by Preſcription.

C **If** a Manor be charged, *ratione tenuræ*, to repair a Bridge, the ancient Freeholders and Copyholders are not liable to contribute; for nothing is Part of the Manor but the Demeſnes and Services: But they who have any Part of the Demeſnes by Purchaſe, muſt contribute. *Hard. Rep.* 131.

And what Lands are chargeable as Part of a Manor.

D **A Man** cannot preſcribe by a *que Eſtate* of a Rent, Advowſon, Toll, *&c.* but he may of a Manor to which theſe are appendant. 2 *Mod.* 144.

In what a Man cannot, and in what he can preſcribe.

E **Where** a Thing becomes in Groſs, it can never afterwards be united to the Manor. *Ibid.*

A Thing in Groſs cannot be afterward united.

F **Although** Tenements are divided from the Reſidue of the Manor, yet the Cuſtom remains, and they continue Copyholders, paying their Services; and he who hath the Freehold of them, may keep Court in any Place, and it is not properly a Court-Baron, but a Court of Survey. *Cro. Eliz.* 103.

Although Tenements are divided from the Manor, yet they continue Copyholds.

A Court of Survey, what.

G **A Manor** is a good Manor, though all the Tenants but one are diſmembred from it. *Cro. Eliz.* 210. See *Cro. Eliz.* 395.

A Manor is a good Manor, though but one Tenant left.

H **Where** the Grantee of a Moiety of Twenty Copyhold Tenements has after the Grant of a Moiety of the Manor, he with the Grantor may hold a Court, and join in the Grant of the Copyhold. *Skin.* 191.

Who may hold a Court and Grant, *&c.*

I **A Grant** of any Part of the Demeſne in Fee, though but for an Inſtant, ſevers it from the Manor, ſo that it can never be Part of it again. *Skin.* 192.

What ſevers the Lands from the Manor.

K **By** what Act it may be deſtroyed, and how it may be reviv'd. 3 *Salk.* 25.

How deſtroy'd.

L **An** Action at Law will not lie againſt the Lord of a Manor for not admitting one to a Copyhold. *Carthew* 492.

No Action againſt the Lord.

Manſlaughter.

What it is.

In what it differs from Murder and Chance-Medley. It admits of Clergy for the firſt Offence.

A Manſlaughter, in Latin, Homicidium, is the unlawful killing a Man without any prepenſed Malice; as when two meet, and upon ſome ſudden Occaſion falling out, the one kills the other. It differs from Murder, in that it is not done with foregoing Malice; and from Chance-Medley, becauſe it hath a preſent Intent to kill. It is Felony, but admits of Clergy for the firſt Time. Staundf. Pl. Cor. lib. 1. cap. 9.

Jury may find a Bill of Manſlaughter to be *Billa vera per infortunium.*

B A Jury may find a Bill of Manſlaughter to be *Billa vera per infortunium. Paſch.* 23 *Car.* 1. *B. R. ſed quære.*

Market, and Market-Overt.

Market-Overt, what.

What Sale alters the Property.

C Every Day of the Week, except Sunday, is a Market-Overt in London; alſo every Shop in London is a Market-Overt for ſuch Goods as are only by the Trade of the Owner put there to be ſold. But if the Sale be in a Warehouſe, and not openly and publickly in the Shop, the Property is not altered. 5 Rep. 83. b.

Sale of Goods unlawfully gotten, ſhall not alter the Property of them, by 1 Jac. 1. cap. 21. ſect. 5.

D No Sale, Pawn, Exchange or Mortgage of any Jewels, Plate, Apparel, Houſhold-ſtuff, or any other Goods, purloined, ſtollen, or robbed from any Perſon or Body Politick, that ſhall be ſold, delivered,

vered, pawned, or done away within the Cities of *London* and *Weſtminſter*, or the Borough of *Southwark*, or within two Miles of *London*, to any Broker or Pawn-taker, ſhall make any Alteration of the Property, from any Perſon from whom they were purloin'd, robbed, or ſtolen.

A **That** a Broker ſhall upon Requeſt declare what Goods are come to his Hands. *Sect.* 7.

That a Broker muſt upon Requeſt declare what Goods are come to his Hands.

B **The** Cuſtom that every Freeman of *London* may buy all Manner of Wares in every Shop, is too general; for then a Scrivener may buy Plate in his Shop, which is unreaſonable: But they ought to be Goods agreeable with his Trade. *Cro. Jac.* 68. *pl.* 10, 69. *Cro. Eliz.* 454. *pl.* 21. See *Moore*, Caſe 492, 856.

What Cuſtom ſhall be good, and what not.

C **So** alſo if the Sale be in a Back-Shop, or other Place not open, it is not good. *Cro. Eliz.* 454. *pl.* 21. *Moore*, Caſe 492.

If the Sale be in a Back-Shop or a Place not open, it is naught.

Marriage.

See { **Baſtard.**
Courts.
Trial. }

D **Although** all Matrimonial Cauſes have been for a long Time determinable in the Eccleſiaſtical Courts, and are now properly within the Juriſdiction of the Clergy; yet *ab initio non fuit ſic*; for as well Cauſes of Matrimony as Teſtamentary Cauſes, were Civil Cauſes, and appertained to the Juriſdiction of the Civil Magiſtrate, until Chriſtian Kings and Emperors allowed them the Conuzance of them. *Davis*'s *Rep.* 51. *b.*

Where Matrimonial Cauſes were originally determin'd.

E **See** an Act for the Puniſhment of ſuch as ſhall take away young Women that be Inheritors, and being within the Age of ſixteen Years: Or marry them without the Conſent of their Parents. 4 & 5 *P. & M. cap.* 8.

An Act againſt Marrying young Women under ſixteen, without their Parent's Conſent. 4 & 5 **P. & M.** cap. 8.

The Penalty of carrying away of a Woman againſt her Will, that hath Lands or Goods: Or an Heireſs apparent. 3 H. 7. c. 2.

A **By** the Statute of 3 *H.* 7. *cap.* 2. it is enacted, That whoſoever taketh any Woman, [Then we muſt go to the Preamble, which ſays, Maiden, Widow, or Wife, having Subſtance, ſome in Goods moveable, ſome in Lands, and ſome being Heirs apparent unto their Anceſtors] for the Lucre of ſuch Subſtance, contrary to their Wills, and after married to ſuch Miſ-doers, or to other, by their Conſent; or defiled againſt her Will unlawfully: Such taking, procuring, abetting, and receiving wittingly of the ſame Woman, ſo taken againſt her Will, is Felony. By the 39 *Eliz.* *cap.* 9. Clergy is taken away; ſo that now it is Felony without Clergy. See in *Cro. Car.* *Fulwood*'s Caſe, and *Bruton*'s Caſe, in *Hob.* 182.

Felony without Clergy, by 39 Eliz. cap. 9.

When a Man or Woman can conſent to marry.

B **The** Conſent of a Male to marry is Fourteen, and of a Female is Twelve.

Eccleſiaſtical Judge is a Judge of a Marriage *infra Annos nubiles.*

Where the Courts of Law ought to credit their Sentences.

C **If** the Perſons be *infra Annos nubiles*, the Eccleſiaſtical Judge is Judge as well of the Aſſent, as of the firſt Contract; and alſo of what ſhall be a ſufficient Aſſent, and what not. And where they have Cognizance, we ought as well to give Credit to their Sentences, as they do to our Judgments. 7 *Rep.* 43. *b.*

Mulier, what.

Baſtard, what.

D **A Man** who is begotten in Adultery during the Coverture, is *Mulier* by the Common Law, and Baſtard by the Spiritual Law. 7 *Rep.* 44. 8 *Rep.* 101, 102.

How long a Divorce is good.

E **A Divorce** is good ſo long as the Sentence continues. 7 *Rep.* 43. *b.* 2 *Leon.* Caſe 207. *Moore*, Caſe 366.

The ſeveral Manners of Divorces.

There are five Manners of Divorces.

F

1. *Cauſa Profeſſionis.*
2. *Cauſa præcontractus.*
3. *Cauſa frigiditatis.*
4. *Cauſa Conſanguinitatis.*
5. *Cauſa Affinitatis.* 2 *Leon.* Caſe 207. See *Cro. Car.* 461. *pl.* 7. 462.

Cauſa Profeſſionis, the Wife ſhall be endowed, and the Heir inherit. *Ibid.* G

A Sentence of Divorce may be repealed after Death.

No Divorce can be after Death.

Baſtard or not, when tried at the Common Law.

H **A Sentence** of Divorce may be repealed in the Spiritual Court, by Suit, after Death of the Parties. But if any of the Parties die before the Sentence of Divorce, they cannot ſue in the Spiritual Court to declare the Marriage void, and baſtardize the Iſſue; for the Trial belongs originally to the Common Law, where there is no Diſability by Sentence in the Spiritual Court. 7 *Rep.* 44. *b.* See *Cro. Jac.* 186.

A **A Divorce** ſhall continue ſo long as the Sentence is in Force: And the Iſſue of the ſecond Marriage ſhall inherit, until the Sentence be repealed. 2 *Leon.* Caſe 207. 5 *Co.* 98. *b.*

A Divorce ſhall continue until the Sentence be revok'd.

The Iſſue of the ſecond Marriage ſhall inherit.

B **Covenant** to do ſuch a Thing upon the Marriage of his Daughter, *ſecundum leges Eccleſiaſticas:* He alledges, That he did marry her *rite & legitime*; this ſhall be tried *per Pais*, for the Marriage is only in Iſſue, and not whether he were lawfully eſpouſed. *Cro. Jac.* 102. *pl.* 35.

How Marriage to be tried.

When *per Pais.*

When *per* Certificate.

C **Where** a Man promiſes to give with his Daughter Wedding Apparel, ſhe ſhall have two Gowns and two Petticoats, one for the Wedding Day, and the other for the Time of Feaſting, which is commonly ſome Days after, according to the Dignity of the Perſon. *Cro. Car.* 53. *pl.* 11.

What ſhall be accounted Wedding Apparel.

D **By** a Sentence in the Spiritual Court, a Woman was ſeparated from her Huſband, *propter ſævitiam*, and the Sentence was, That ſhe ſhould be ſeparated *a Menſa & Thoro*, but not the Word *Divorciamus* in it: She afterwards marries a ſecond Huſband; the Court ſeemed to be of Opinion, that this was Felony, and adviſed her to get her Pardon. *Cro. Car.* 461. *pl.* 7. 462, 463. See *Moore*, Caſe 942.

A Woman divorc'd *a Menſa & thoro*, marries again, it ſeems to be Felony in her.

1 **Jac.** 1. **cap.** 11.

E **Where** a Maid is taken away againſt her Will, although the Marriage is with her Conſent, yet it is Felony within the Statute. *Cro. Car.* 492, 482, 484, 488. See 39 *Eliz. cap.* 9. which takes away the Benefit of Clergy in this Caſe.

A Maid taken away againſt her Will, and married with her Will, Felony by 3 **H.** 7. **cap.** 2. 39 **Eliz.** **cap.** 9.

F **A Man** married his Wife's Siſter's Daughter, this was argued but nothing done in it. 5 *Mod.* 448, 449.

A Man married his Wife's Siſter's Daughter.

G **A Man** was ſued in the Spiritual Court for marrying of his Siſter's Baſtard Daughter: This was argued on both Sides, but the Court inclined not to grant a Prohibition. 5 *Mod.* 168, 169.

A Man married his Siſter's Baſtard Daughter.

H **The** Defendant (a Woman) promiſed the Plaintiff, that in Conſideration that he would marry her, ſhe would marry him: Then he ſays, That he offered himſelf to her, but ſhe refuſed, and married the other Defendant: This Action is grounded upon mutual Promiſes, and adjudg'd, that it well lies. 5 *Mod.* 411, 412.

An Action lies upon mutual Promiſes of Marriage.

I **By** the Statute made 7 & 8 *W. cap.* 35. *Sect.* 2, 3. it is enacted, That every Parſon, Vicar, and Curate, who ſhall marry any Perſon in any Church or Chapel, exempt, or not exempt, or in any other Place, without Publication of Banns of Matrimony, according to Law; or without Licences for ſuch Marriages firſt had, ſhall for every Offence forfeit 100 *l.* See 6 & 7 *W. cap.* 6. *Sect.* 52.

Penalty on Parſons marrying without Banns or Licence.

7 & 8 **W.** 3. **cap.** 35. **Sect.** 2, 3, 4.

6 & 7 **W.** 3. **cap.** 6. **Sect.** 52.

The like for permitting of others to do it in their Churches.

A **And** alſo every Parſon, Vicar, or Curate, who ſhall employ, or knowingly ſuffer any other Miniſter to marry in any Church or Chapel, to ſuch Parſon, Vicar, or Curate belonging, without Publication of Banns or Licence firſt had, ſhall forfeit 100 *l.* one Moiety to the King, and the other to the Informer.

The married Man to forfeit 10 *l.*

How to be recovered.

B **That** every Man ſo married without Licence or Banns, ſhall forfeit 10 *l.* to be recovered with Coſts, by any Perſon who ſhall ſue for it.

The Pariſh Clerk or Sexton to forfeit 5 *l.*

C **That** every Sexton, and Pariſh Clerk, or Perſon acting for them, who ſhall knowingly aid, promote, and aſſiſt at ſuch Marriage, without Banns or Licence, ſhall forfeit five Pounds, to be recovered with Coſts, as aforeſaid.

Felony to marry a ſecond Huſband or Wife, the former living.

1 **Jac.** 1. **cap.** 11.

D **By** an Act made 1 *Jac.* 1. *cap.* 11. entituled, *An Act to reſtrain all Perſons from Marriage, until their former Wives and former Husbands are dead*, it is enacted, That if any married Perſon do marry any Perſon, the former Wife being alive, it ſhall be Felony, and the Perſon offending ſhall ſuffer Death, as in Caſes of Felony: The Party to be tried in the County where apprehended.

Not where there is Abſence for ſeven Years.

E **Not** to extend to any Perſon whoſe Huſband or Wife ſhall continue beyond Sea for ſeven Years together, in any of His Majeſty's Dominions, the one not knowing the other to be living.

Nor in Caſe of a Divorce.

F **Nor** where there ſhall be a Divorce by Sentence.

Works no Corruption of Blood.

G **This** Attainder ſhall work no Corruption of Blood, Loſs of Dower, or Diſinheriſon of Heir.

The Difference between a Bequeſt out of Goods, and where out of Lands.

Where there is a Condition to be void, upon marrying without Conſent.

H **A Man** deviſes to his Daughter one thouſand Pounds, upon Condition that ſhe marries with the Conſent of *A. B. C.* and deviſes further, That if his Goods are not ſufficient to pay his Debts and Legacies, then two hundred Pounds *per Annum* of his Lands ſhall be ſold for the Payment of them: And held, That although by Eccleſiaſtical Law, ſuch a Condition annex'd to a Legacy, is void; becauſe the Marriage ought to be free without Coercion; yet it is not ſo at the Common Law. See *Popb.* 58, 59. See *Fry* and *Porter*'s Caſe. 1 *Mod. Rep.*

A ſecond Marriage and Cohabitation, *infra annos nubiles*, is good.

I **If** a Woman marries another Huſband, *infra annos nubiles*, and cohabits with him, this ſhews her Diſagreement to the firſt Marriage. *Moore*, Caſe, 764.

A Divorce *a Menſa & Thoro*, hinders another Marriage: But *à Vinculo Matrimonii*, they may marry again.

K **A Man** was divorc'd for the Incontinency of his Wife, and after marries another (leaving the firſt) this is a void Marriage: For the firſt is only *a Menſa & Thoro*, not *a Vinculo Matrimonii*. *Moore*, Caſe 942.

A **A Man** contracts to marry with *A.* and after marries *B. A.* sues him in the Spiritual Court, and Sentence given, That he ſhall eſpouſe *A.* and cohabit with her, which he doth, and they have Iſſue; then he dies: And adjudg'd, That the Iſſue ſhall inherit, tho' there was no Divorce from the Marriage of *B.* *Moore*, Caſe 303.

A Marriage diſſolved by a Precontract, without a Divorce, and the Iſſue of the firſt Man inherited.

B **What** ſhall be a good Evidence of a Promiſe of a ſingle Woman to marry a ſingle Man. 3 *Salk.* 16, 64.

Promiſe of Marriage.

C **In** perſonal Actions the Matter muſt be laid upon the Fact of Marriage, *viz.* that at ſuch a Time and Place the Parties were married; but in real Actions and in Appeals it muſt be laid upon the Right of Marriage, *viz.* In *legitimo matrimonio copulati.* *Ibid.* 64.

How to lay the Declaration.

D **Cuſtom** to pay ſo much for marrying, is triable at Law. *Ibid.* 86.

Cuſtom where triable.

E **Marriage** with the Conſent of ſuch Perſons, is only *interrorem.* *Ibid.* 246.

F **See** of an inceſtuous Marriage of his Baſtard Daughter. *Comb.* 200, 356, 360.

Inceſt.

G **What** will amount to a Marriage Contract. *Carthew* 99, 100, 467.

Marriage Contract.

H **A Sentence** in the Spiritual Court given againſt a Marriage is good till repealed. *Ibid.* 225.

Sentence in the Spiritual Court.

I **Where** a Man married his firſt Wife's Siſter, and upon a Libel againſt him for Inceſt, he pleaded the Death of his Wife in Abatement, and yet that Court proceeded to annul the Marriage: A Prohibition was granted *quoad*, the annulling the Marriage after the Death of the Wife; but that they might proceed againſt the Huſband, *pro ſalute animæ.* *Ibid.* 271.

Where a Prohibition was granted.

K **An** Information in Nature of Conſpiracy againſt the Defendants for procuring a ſcandalous Marriage. *Ibid.* 384.

Information.

L **Where** there was a Bond with a Condition to pay Money to a Feme Sole, if ſhe married and ſurvived, the intended Huſband is not diſcharged by the Marriage. *Ibid.* 511.

Bond diſcharged.

Of Legal Marriages, *&c.* Vide **Baſtards** and **Baſtardy.** *Modern Caſes in Law and Equity.*

Of Marriage Settlements, *&c.* *Ibid.* 249 to 252.

Of Power to make Leaſes, *&c.* reſerved on a Marriage Settlement. *Id.*

Marſhal.

Marſhal.

Marſhal, what.

A THE Marſhal is an Officer, who is to give a due Attendance upon the Court, and to take into his Cuſtody, and ſafely to keep all ſuch Priſoners as ſhall be committed to his Cuſtody by the Court, upon any Account whatſoever.

The Office of the Marſhal.

To be always preſent in Court, when Sitting.

And is finable for his Abſence.

B The Marſhal of the *Marſhalſea* of this Court, is intended to be always preſent in Court while the Court is ſitting: For it is his Office to be always attending upon the Court to execute his Office in relation to the Court upon all Occaſions that may fall out, ſitting the Court: And he is finable for his Abſence, and his Non-Attendance is a Forfeiture of his Office. *Hill.* 21 & 22 *Car.* 2. *in B. R.*

Maſter and Servant.

See **Hue and Cry.**

Servants imbezilling or ſtealing of their Maſters Money, &c. to the Value of Forty Shillings, made Felony by 21 H. 8. cap. 7.

C BY an Act made 21 *H.* 8. *cap.* 7. entituled, *An Act againſt Servants imbezilling their Maſters Goods of the Value of Forty Shillings, or above, ſhall be Felony,* it is enacted, That if a Servant, to whom any Jewels, Money, or Goods of his Maſter, ſhall be delivered, ſhall go away with the ſame,

ſame, to the Intent to ſteal them, or defraud his Maſter thereof, contrary to his Truſt: Or being in his Maſter's Service ſhall imbezil the ſame, or convert them to his own Uſe with Purpoſe to ſteal them: If the ſame ſhall be of the Value of 40 *s.* or above, it ſhall be adjudged Felony. *Note*, This Act was repealed by a Clauſe in the Statute of 1 *M. cap.* 1. but afterwards by a Statute made 5 *Eliz. cap.* 10. it was revived and continued for ever.

1 Mariæ, cap. 1.
5 Eliz. cap. 10.

A **Caſe** lies for retaining and keeping a Servant, who departed from his Maſter without his Licence before he had ſerved his Year out, of which the Defendant had Notice; and becauſe the Defendant had Notice that he was his hired Servant, he ought not to have retained him. 2 *Lev.* 63.

Caſe lies for retaining and keeping of another's Servant.

B **A Servant** is robbed of a Sum of Money in an Inn upon the Road: The Action was brought by the Maſter, and held, That it well lay. *Cro. Jac.* 224. *pl.* 4.

The Servant is robbed in an Inn, the Maſter muſt bring the Action.

C **A Servant** was ſued ſolely for a tortious Act committed by the Command of his Maſter. 3 *Lev.* 352.

A Servant ſued ſolely for a tortious Act done by his Maſter's Command.

D **Where** a Converſion is to the Uſe of the Maſter, the Action muſt be brought againſt the Maſter, and not the Servant. 2 *Mod.* 245.

Where it muſt be brought againſt the Maſter, and where againſt the Servant.

E **No** Action will lie againſt a Servant in Obedience to his Maſter's Commands, provided he doth not an apparent Wrong. For tho' the Maſter had no Title, the Servant ſhall be excuſed; otherwiſe it would be miſchievous, that the Servant, before he obeys his Maſter's Command, muſt be ſatisfied with his Title and Right. 2 *Mod.* 244, 245.

Where a Servant ſhall be excuſed in obeying his Maſter, and where not.

F **A Servant**, ſhall not be ouſted of the Advantage which the Law gives him in pleading of his Maſter's Commands. 2 *Mod.* 68.

A Servant may plead his Maſter's Commands.

G **Where** a Man ſends his Servant to Market with ready Money, or pays the Servant at the Week's End what the Marketings come unto: The Servant buys Meat of a Butcher, or other Things of other Perſons, but doth not pay for it: And the Butcher, or other Perſon, brings his Action againſt the Maſter. Upon a Trial at *Niſi Prius*, the Chief Juſtice was of Opinion, That the Action did not lie. But if the Servant uſually buys for the Maſter upon Tick, and the Servant buys ſome Things without the Maſter's Order; yet the Maſter being entruſted by the Trader, the Maſter will be chargeable. *Hill.* 1 *Annæ B. R.* See *Show. Rep.* 95.

Where a Man gives his Servant Money to go to Market, and he buys upon Truſt.

Where a Merchant gives his Factor Order to buy Goods of *J. S.* there the Merchant is Debtor; but if to buy generally, the Factor is Debtor.

A Merchant in the Country hath a Factor in *London*, and ſends up to his Factor to buy ſeveral Goods to ſend to his Correſpondent beyond Seas; the Factor buys Goods of ſeveral Perſons, and then becomes Inſolvent, and Actions are brought againſt this Merchant for thoſe Goods. And the Jury found a Verdict for the Defendant, upon this Diverſity, *viz.* Where the Merchant orders his Factor to buy Goods of any particular Perſon, there the Merchant is Debtor, and not the Factor: But where he gives a general Order to buy Goods, there the Factor is Debtor, and not the Merchant. *Buckley*'s Caſe, when *Pemberton* was Chief Juſtice, upon a Trial at *Niſi Prius* in *London*, by a Jury of Merchants. A

Where a Factor hath a bare Authority to ſell, he cannot give a Day of Payment.

Where a Factor hath a bare Authority to ſell, in ſuch Caſe he hath no Power to give a Day of Payment, but muſt receive the Money upon the Sale. 2 *Mod.* 100. B

Where the Action lies againſt the Maſter, and where not.

Where the Action lies againſt the Maſter, and where not. See before in Title **Deceit**, at the End of that Title. See alſo *Danv. Abr.* from *fol.* 184, 185, *&c.* C

Treſpaſs lies for the Maſter againſt a Servant for converting of his Goods.

A Servant is employ'd by his Maſter to ſell Goods in his Shop, the Servant carries away and converts them to his own Uſe: Treſpaſs, *Vi & Armis*, lies for this; for the Servant cannot meddle with them in any other Manner than to ſell them, according to the Authority to him committed. 1 *Leon.* 88. Caſe 110. D

What Juſtices can do between Maſters and Apprentices.

What Power Juſtices of the Peace have between Maſters and Apprentices. 5 *Mod.* 139, 140. and 5 *Eliz.* *cap.* 4. E

The Orders for Artificers, Labourers, Servants of Huſbandry, and Apprentices.

5 **Eliz.** cap. 4.

See at large the Act, containing divers Orders for Artificers, Labourers, Servants of Huſbandry, and Apprentices. 5 *Eliz.* *cap.* 4. F

Maſter where chargeable.

Where the Maſter is chargeable for the Acts of his Servant, and where not. 3 *Salk.* 234. G

Scilicet.

The Maſter is liable for neglect of his Servant, not the wilful Wrong. *Ibid.* 441. H

Scilicet.

And he that imploys a Servant, undertakes for him. *Ibid.* 440. I

Where not.

Yet the Servant's Act binds not the Maſter, unleſs he acts by his Authority, or he conſents. *Ibid.* 442. K

Owners of a Ship, where liable.

Goods are ſpoil'd by Default of a Maſter of a Ship imployed by the Owners, the Owners are liable. *Ibid.* 440. L

Againſt whom the Action.

But the Action muſt be brought againſt all the Part-owners who make but one Maſter. *Ibid.* M

A **The** Servant may juſtify Battery in Defence of his Maſter, but not *converſo*. *Salk.* 407.

Servant where to juſtify.

B **If** a Servant be robbed of his Maſter's Money or Goods, he or the Maſter may ſue the Hundred. *Ibid.* 613, 614.

Who may ſue for a Robbery.

C **A Maſter** of a Stage-Coach is liable for Goods loſt by his Driver, if he takes a Price for Carriage, *aliter* not. *Ibid.* 282.

Maſter of a Stage-Coach, where liable.

D **Of** a Covenant between the Maſter and a third Perſon, the Servant not being Party. *Vide* **Apprentices.** *Ibid.* 479.

Where the Servant no Party.

E **Order** by Juſtices for Payment of Servant's Wages, if it does not appear what Wages, it ſhall be intended Huſbandry. *Ibid.* 442, 484.

Servant's Wages.

F **So** an Order to pay 42 *s.* for Labour in Huſbandry, held good, tho' it does not appear ſuch Wages as the Statute directs. *Ibid.* 441.

Order, where good.

G **See** the Diſtinction between *ſervus prædialis*, and *perſionalis*. *Ibid.* 667.

Prædial and hired Servants.

H **If** the Maſter command his Servant to do what is lawful, and he miſbehave himſelf, the Maſter ſhall not anſwer for him. *Skin.* 228.

When the Maſter not liable.

I **Where** the Maſter ſhall be chargeable for the Act of the Servant. *Comberb.* 117, 118, 451.

K **The** Maſter may have an Action for inveigling away his Servant. *Ibid.* 111.

Enticing away a Servant.

Maſter of a Ship.

L **He is the Perſon with whom the Ship is intruſted, by the Owners and Freighters.**

What he is.

M **The** Maſter, in Caſe of a Freight, may detain the Goods till Payment. *Mod. Caſes* 12.

He may detain the Goods for the Freight.

N **It** ſeemed to *Holt* Chief Juſtice, That a Ship being taken by Enemies, and no Hopes of Retaking; the Maſter may compound for a Ranſom, as well as he may throw Goods over-board, in Caſe of a Tempeſt. *Ibid.*

What a Maſter may do in Caſe of a Capture or Tempeſt.

How it is where Goods are hypothecated.

A **If** a Ship be hypothecated, (*viz.* pawned for Neceſſaries) in whoſe Hands ſoever it comes, it is liable: So if Goods be hypothecated, it will be the ſame. *Mod. Caſes* 13.

What Redemption is.

The Maſter may detain for Freight.

And compound with Pirates and Privateers, for Redemption.

B **Redemption** is a Species of Salvage, which is to reſcue by Force, or redeem by Money; and the Maſter repreſents the Owners and Freightors, and may detain Goods for the Freight: And it ſeems very reaſonable, that a Maſter compounding for Goods, under theſe Circumſtances, ſhould be ſatiſfied by the Owners: And ſo it is in Caſe of Pirates, *a fortiori* in Caſe of Capture by Enemies. *Ibid.* 13.

Meſne Profits, See {**Ejectment.** **Treſpaſs.**}

Medietas Linguæ, See **Venue and Venire Facias.**

Memorandum, See **Declaration.**

Merger.

See **Surrender.**

Merger, what.

C **A Merger is where the leſſer Eſtate is drowned in the greater: As if the Fee comes to Tenant for Years, or Life, the particular Eſtates are merged in the Fee; but an Eſtate-Tail cannot be merged in an Eſtate in Fee.**

What Things are merged in the Crown when they come again to the King, and what not.

D **There** is a Difference between a Thing, which was originally a Flower of the Crown, and other Things which are not, as *Bona & Catalla Felonum*, *&c.* If ſuch come again to the King, they are merged in the Crown: But it is otherwiſe in Caſe of Leets, Parks, Warrens, Toll, *&c.* which were created by the King. 2 *Mod.* 144.

Leſſee for twenty Years accepts a Leaſe of ten Years, it is a preſent Determination.

E **If** a Leſſee for twenty Years accepts a Leaſe for ten Years, to commence preſently: The Term for twenty Years is ſurrendered or determined preſently. *Cro. Eliz.* 522.

A **Leſſee** for Life accepts of another Leaſe for his own and two others Lives, and Livery is made; but it being *Habendum a Die Datus*, it was adjudg'd a void Leaſe: But although it was a void Leaſe, yet it was held to be a Surrender of the firſt Leaſe. *Cro. Eliz.* 873, 874.

Accepting of a void Leaſe is a Surrender of a good Leaſe.

B **If** there be Tenant in Tail, Remainder to his right Heirs, he may grant or deviſe his Remainder over; for an Eſtate-Tail cannot be merged, ſurrendered, or extinct, by the Acceſſion of a greater Eſtate to it. 2 *Rep.* 61. *a.* 8 *Rep.* 47. *b.* See Title **Tenant in Common.**

Remainder in Fee doth not merge an Eſtate-Tail.

C **A Deviſe** to a Man for Life, Remainder to his next Heir Male, and the Heirs Males of the Body of ſuch next Heir Male: The Deviſee hath but an Eſtate for Life, for he hath no more deviſed to him; but he may by Fine, Recovery, or Feoffment, deſtroy the Contingent Remainder to his next Heir Male, for *Nemo eſt Hæres viventis*; and no Eſtate is veſted in the Heir, till after the Death of the Tenant for Life. See 1 *Rep.* 66. *b.* 67. *a.*

Deviſe for Life, Remainder to his next Heir Male, and the Heirs Males of the Body of ſuch Heir Male.

This is a contingent Remainder, and may be deſtroyed.

D **A Leſſor,** who hath the Fee, marries with the Leſſee for Years: This is no Merger; becauſe he hath the Inheritance in his own, and the Leaſe in the Right of his Wife. 2 *Plow.* 418. *b.*

Leſſor who hath the Fee, marries the Leſſee; it is no Merger.

E **The** Baron having the Term in his own Right, and the Inheritance deſcending to his Wife (ſo as he had a Freehold in her Right) yet the Term was not drowned. *Cro. Jac.* 275. *pl.* 4.

Where the Baron hath a Term, and the Inheritance deſcends to his Wife, it is no Merger.

F **Where** there ſhall be a Merger of Eſtates, and where not. See 2 *Rep.* 60. *b.* 61. *a.*

Where a Merger, and where not.

Meſſuage.

G **Meſſuage ſignifies a Dwelling-Houſe; but by that Name may alſo paſs a Curtilage, a Garden, an Orchard, a Dove-houſe, a Shop, a Mill, a Cottage, a Toft,** &c. **as Parcel of a Meſſuage.** Bract. lib. 5. cap. 28.

Meſſuage, what.

H **A** *Præcipe* lies not *de domo*, but *de meſuagio*. *Co. Litt. cap.* 8.

A *Præcipe* lies of it.

One Meſſuage cannot be appurtenant to another.

One Meſſuage cannot be appurtenant to another Meſſuage: *Mich.* 24 *Car.* 1. *B. R.* For a Meſſuage is an entire Thing of itſelf, and therefore cannot be Appurtenant to another Thing: For that which appertains to another Thing may be ſaid to be Part of it, and ſo not entire of itſelf. A

What paſſes by the Grant of a Meſſuage, *cum pertinentiis.*

By the Grant of a Meſſuage *cum pertinentiis*, the Stables, Barns, Out-houſes, Gardens, and Curtilages, paſs; but Lands do not paſs properly as appurtenant to a Meſſuage: But if a Leaſe be of a Meſſuage, with the Lands therewith uſed, or therewith uſually letten, there Lands will paſs with it. B

Mines.

Mines, what.

Mines are hidden Treaſures dug out of the Earth: And what are Royal Mines, and what not. See the Caſe of Mines in Plow. Com. C

Coal Mines open may be dug.

But it is Waſte to dig new Mines.

If a Man hath Land where there is a Coal-Mine open, and he lets the Land for Life or Years, the Leſſee may dig. But if there was no Mine open at the Time of the Demiſe, it is Waſte for the Leſſee to make new Mines. 5 *Rep.* 12. *a.* D

Where Mines are let, Leſſee may dig for them.

If a Man hath a hidden Mine in his Land, and lets his Land, and all Mines therein, the Leſſee may dig for them. 5 *Rep.* 12. *a.* E

Miſcontinuance, See Diſcontinuance.

Miſnoſmer.

See { **Corporations.** **Deviſe.** **Grants.**

A **M**iſnoſmer is a French **Word, and ſignifies the Miſnaming, or not true Naming, of any Perſon, or Thing.** Miſnoſmer, what.

B *Nomen eſt quaſi rei Notamen*, and *Nomina ſunt Notæ Rerum*, and were invented to make a Diſtinction between Perſon and Perſon; and where a Perſon is ſo deſcribed, that he may be certainly diſtinguiſhed from other Perſons; the Omiſſion, or in any Caſe the Miſtake of the Name of Baptiſm, ſhall not avoid the Grant. So of the Name of a Corporation. 11 *Rep.* 20. *b.* 21. *a.* 22, *&c. a.* Names, what, and why given. Where Miſtake of a Name of Baptiſm ſhall not hurt a Grant.

C **A Deviſe** to a Corporation, which doth not exactly agree with the proper Name of the Corporation, is good: Becauſe when a Man makes his Will, the Law ſuppoſes him to be *in extremis*, and cannot ſearch for the right Name of the Corporation. *Daliſ.* 78. *pl.* 8. 3 *Leon.* Caſe 44. *Cro. Eliz.* 106. *pl.* 20. Miſnoſmer of a Corporation in a Deviſe, ſhall not hurt.

D **What** Grants ſhall be good, where there is a Miſnoſmer of a Corporation, and what are not. See 1 *Leon.* from 159, to 165. Caſe 228. *Moore*, Caſe 367. Miſnoſmer of Corporations in Grants.

E **A Leaſe** by the Dean and Chapter of *Chriſt's-Church, Oxford*, and they had put in the Words *in Academia Oxon*, inſtead of *Oxon* only: But held to be good. *Poph.* 56. *Moore*, Caſe 493, 438. To *Chriſt-Church Oxon* was added *Academia*, but yet good.

F **The** Law is not ſo preciſe in Caſe of Sirnames, as it is of Chriſtian Names; and therefore a Grant made to or by *John* the younger Son of *J. S.* is good: But the Chriſtian Name ought always to be perfect. *Poph.* 57. Chriſtian Names ought always to be perfect.

Judgment.

Where there was a Verdict that *Robert* the Defendant ſeal'd the Obligation by the Name of *John*, and Judgment for the Plaintiff. *Comberb.* 40. A

Plea of Pardon by Baronet.

Quære, if one outlaw'd for Treaſon by the Name of *Knight*, can plead a Pardon by that of *Baronet*. *Ibid.* 65, 184. B

Miſnomer in a Plea.

Of miſtaking the Plaintiff's Name for the Defendant's in pleading the Statute of Limitations. See *Comberb.* 45. C

What cured by Appearance.

Jermin for *Jermy* pleaded in Abatement, but held cured by Appearance. *Comberb.* 188. D

Syms for *Symons* pleaded in Abatement, and held naught. *Ibid.* 308. E

Amendment.

Where *Robert* for *Richard* in a Declaration was amended. *Ibid.* 287. F

Baronet.

Baronet is a Dignity and Part of the Name. 3 *Salk.* 235. G

Knight.

Knight is likewiſe a Dignity and Part of the Name. *Ibid.* 386. H

Traverſe.

The Defendant was ſued by the Name of *John*, and pleaded that he was baptized by the Name of *Benjamin*, and traverſed that he was known by the Name of *John*; this Traverſe is repugnant. *Ibid.* 238. I

Alias dictus.

Where an *alias dictus* is proper, and where not. *Ibid.* K

Demurrer.

Where a Demurrer to a *Miſnomer* is not good. 3 *Salk.* 152, 236. L

Plea.

Where *John* was ſued, and he pleaded that his Name was *Thomas*. *Skin.* 338, 339. M

Where there was a Miſnoſmer in the Sirname. 3 *Salk.* 239. N

Miſrecital, See **Recital**.

Modus Decimandi.

A *Modus Decimandi*, what.

Modus Decimandi is, when Lands, Tenements, or Hereditaments, have been given to the Parſon, and his Succeſſors; Or an annual certain Sum, or other Profit, always, Time out of O of Kind, to the Parſon, and his Succeſſors, in full Satiſfaction and Diſcharge of all the Tithes in Kind, in ſuch a Place. See this Matter treated upon in the Title **Tithes** and Title **Prohibition**.

A A Bill to eſtabliſh a *Modus* payable on or about ſuch a Day, is uncertain, and therefore ill. *Mod. Caſes in Law and Equity* 375.

Money in Court.

See **Motion**.

B Money is brought into Court, either by a Rule of Court, or elſe by pleading of a Profert in Curiam of the Money; and unleſs the Money is not paid into Court, the Plea will not be received.

Profert in Cur.

C By an Act *For the Amendment of the Law*, 4 & 5 *Annæ*, it is enacted, That if at any Time, pending an Action upon a Bond with a Penalty, the Defendant ſhall bring into Court all the Principal and Intereſt due upon ſuch Bond, with the Coſts expended in Law or Equity upon ſuch Bond, the Money ſo brought into Court, ſhall be deemed and taken to be in full Satiſfaction and Diſcharge of the ſaid Bond; and the Court ſhall and may give Judgment to diſcharge every ſuch Defendant of and from the ſame accordingly.

Defendant may at any Time, pending the Action, bring the Money and Charges into Court. 4 & 5 Ann.

D The Money muſt be brought into Court upon the Plea of a Tender.

Money in Court upon the Plea of a Tender.

E Where Money may or ought to be brought into Court. *Comberb.* 8, 9, 16, 20, 45, 169, 255, 264, 299, 357.

F Any Piece of Money coin'd at the Mint, is of Value as it bears Proportion to other Current Money, and that without the King's Proclamation. *Salk.* 446.

G The Unit being raiſed ſixteen Pence by King *James* the firſt, was the Occaſion of coining Guineas, *viz.* at 20*s.* *Ibid.*

H In *Indeb' Aſſumpſit* to pay 13*l.* 10*s.* for nine Guineas received, not neceſſary to ſhew the Number of Guineas. (*Vide* 9, 22.) *Ibid.*

I Money paid on a void Award may be pleaded as Accord and Satiſfaction. *Salk.* 71.

A. receives Money of *B.* by the Hands of *C.* 'tis *A.*'s Money, and he muſt abide by the Loſs. *Salk.* 507. A

A Power to charge Lands with a Sum of Money, imports the Intereſts thereof alſo. *Salk.* 538. B

Touching bringing Money into Court. *Vide Salk.* 583, 596, 597. C

Where Money, *&c.* ſhall be brought into Court. *Mod. Caſes in Law and Equity* D

In Trover and Actions for Damages, no Leave for the Thing, *&c.* to be brought into Court; *contra* in Detinue. *Ibid.* 176. E

Motion to ſtay Proceedings on a Judgment, for that Part of the Money was paid, denied, unleſs the Remainder (with Coſts, *&c.*) be brought in Court. *Ibid.* 236. F

In Replevin no Stay of Proceedings on bringing in what is due for Damages. *Ibid.* 379. G

On a disjunctive Agreement to find Lodging, Diet, *&c.* or pay 10*l.* the 10 *l.* was brought into Court. *Ibid.* 305. H

Monopoly.

Monopoly, what.

Monopoly is an Allowance from the King by his Grant, Commiſſion, or otherwiſe, to any Perſon or Perſons, of or for the ſole buying, ſelling, making, working, or uſing, of any Thing, whereby any Perſon or Perſons are reſtrained of any Freedom or Liberty that they had before, or are hindered in their Lawful Trade; which is declared illegal by 21 Jac. 1. cap. 3. **except in ſome particular Caſes, which ſee in** 3 Inſt. fol. 189. I

All Monopolies and Grants for any Penalty or Forfeiture by any Statute, until Judgment had, are utterly void. 21 **Jac.** 1. **cap.** 3.

All Monopolies, Grants, Licences, Letters Patents, made or to be made to any Perſon or Body Politick, for the ſole buying, ſelling, making, working or uſing of any Thing; and all Diſpenſations, Licences or Tolerations to agree or compound with any others, for any Penalty or Forfeiture limited by any Statute, or Grant thereof before Judgment had, are utterly void and not to be put in Execution. K

How to be tried.

Monopolies ſhall be tried by the Common Laws of the Land. L

The

A **The** Party grieved upon Pretence of a Monopoly, to recover treble Damages and double Coſts.

The Party grieved to recover treble Damages and double Coſts.

B **Letters Patents** for new Inventions not uſed in *England*, ſaved.

New Inventions ſaved.

C **So** alſo Grants for Printing, making Gun-powder, making Ordnance or Shot for them.

Printing, Salt-petre, Ordnance and Shot excepted.

D **A By-Law** which makes a Monopoly is void; and a Preſcription of ſuch a Nature to induce ſole Trade or Traffick, to one Company or to one Perſon, and to exclude all others, is againſt Law. *Moore, fol.* 591.

By-Laws which make Monopolies are void.

E **The** Difference between Monopoly and engroſing is, the one is by Patent from the King, the other is by the Act of the Subject between Party and Party. *Skin.* 169.

Monopoly and Engroſing.

F **A Monopoly** is no immoral Act, but only againſt the politick Part of the Law. *Skin.* 226.

What it is.

G **The** Statute of Monopolies does not extend to Letters Patents granted to Companies. *Skin.* 234.

How far the Statute extends.

H **All** Bonds in Reſtraint of Trade tend to Monopolies. *Comberb.* 121, 122.

Bonds.

I **See** the Construction of the Statute 21 *Jac.* 1. *cap.* 3. **Monopolies**, and of **New Inventions**. Salk. 447.

Monſtrans.

See { **Deeds.**
Oyer.
Profert in Curiam.

K **Monſtrans des Faits is the producing of the Deed in Court when an Action is brought upon any Deed; and the Defendant may demand a Copy of it to be made at his own Charges, before he is bound to plead to it.**

Monſtrans des Faits, what.

Monſtrans de Droit, what.

A Monſtrans de Droit ſignifies a Writ iſſuing out of Chancery, to be reſtored to Lands or Tenements, that indeed are mine by Right, though by ſome Office found to be in the Poſſeſſion of one lately dead.

B No Perſon ſhall be compelled to ſhew a Thing in Pleading, which by common Intendment he cannot have Knowledge of. 22 *Car.* 1. *B. R.* 38 *H.* 6. *fol.* 3. For the Law does not require unreaſonable Things to be done.

Where a Man pleads a Deed, it muſt be with a *Profert in Curia.*

Note, This is by the 4 & 5 Ann. cap.

Cannot proceed after *Oyer*, till produced, and a Copy given.

C Where a Man pleads any Deed, which is the Subſtance of his Plea or Declaration, if he doth not plead it with a *Profert in Curia*, his Plea or Declaration is naught upon a ſpecial Demurrer ſhewing of it for Cauſe: And if he doth plead it with a *Profert in Curia*, if the other Party demands a Sight of it, he cannot proceed till he hath ſhewn it. And if the other Party hath had a Sight of it, if he demands a Copy of it, he cannot proceed until a Copy is delivered unto him at the Charges of him who requires it.

Where the Servant who juſtifies, muſt ſhew in Court the Deed.

D Where a Man juſtifies under a Deed only as a Servant, and claims no Title himſelf, nor hath any Intereſt therein, but the Title and Intereſt is his Maſter's; yet he ought to ſhew the Deed, for it is the Subſtance of the Title, and without ſhewing of it he cannot juſtify. *Cro. Jac.* 292.

Where a Man derives his Title as Servant, not by Act in Law, there he muſt ſhew the Deed; not where he derives it by Act in Law.

E The Defendant juſtifies as Servant to the Queen's Patentee for Years, and by his Command, and doth not bring into Court the Patent; and held that the Plea was naught: For that he deriving his Title from the Patentee, not by Act in Law, but by his Command, he ought to ſhew the Patent, as well as he who claims under the Patent by Aſſignment: But he who claims Intereſt under an Act in Law, (becauſe he had no Means to compel the Patentee to ſhew it) may juſtify without ſhewing of it. *Cro. Jac.* 317. 10 *Rep.* 99. *a. Cro. Jac.* 292, 360. *pl.* 21.

Where the Servant juſtifies by a Leaſe coming in by Title and Privity, he ought to ſhew it; otherwiſe he cannot juſtify the Entry into another's Soil.

F Where a Servant juſtifies for Tithes by Leaſe, yet coming in by Title and Privity, he ought to ſhew it as well as his Maſter; and he cannot plead the Entry into another's Soil, without making a good Title thereto, which ought to be by ſhewing of the Leaſe. *Cro. Jac.* 360. *pl.* 21.

Pleading.

G If the Plaintiff fails in his own Title, he can't take Advantage of another's, or want of Title in the Crown. *Salk.* 447.

What before the Court.

H The Record of the Inquiſition thereon is before the Court with reſpect to the Plaintiff only. *Salk.* 448.

A **Where** a *Monſtrans de Droit* and where a Petition of Right is the proper Remedy for a Demand which a Subject hath upon the Crown. *Skinner* 608, 9, 613, 14.

What a proper Remedy.

B **Where** upon a *Monſtrans de Droit* the Judgment of the Court is erroneous, if the Remedy be proper the Court ought to give a new Judgment. *Ibid.* 615, 16.

Where the Court are to give a new Judgment.

Month.

C IT was moved whether the Loan or Forbearance of Money ſhall be accounted according to twenty-eight Days to the Month, or elſe by Kalendar Months, as *January*, *February*, *&c.* and it ſeemeth to ſome at twenty-eight Days, and to others by Kalendar Months. 1 *Leon.* 96.

How Months ſhall be accounted.

D **A Man** is bound to deliver twenty Quarters of Corn the 29th of *February*, he is not to deliver it 'till there is a 29th of *February*. 1 *Leon.* 101. Caſe 132.

To do an Act the 29th of *February*, muſt ſtay till 'there is a 29th.

E **The** Lapſe ſhall be accounted from ſix Kalendar Months after Notice. *Cro. Jac.* 141. *pl.* 17. But *fol.* 166. *pl.* 6. and 167, ſays, That it ſhall be one hundred eighty-two Days to the Half-year.

The Lapſe ſhall be accounted from ſix Kalendar Months.

F **In** Caſe of a Condition for Rent the Month ſhall be accounted at twenty-eight Days, ſo in Caſe of Inrolments; ſo in Caſe of Leets, and generally in all Caſes where the Statute ſpeaks of Months: But where the Statute ſpeaks of Years, then it is one hundred eighty-two Days to the Half-year. *Cro. Jac.* 167.

How in a Condition for Rent; how in Caſe of Inrolments; how in Caſe of Leet; how where the Statute ſpeaks of Months; how when it ſpeaks of Years.

Mortgage.

G A **Mortgage is when a Man makes a Conveyance to another, upon Condition, That if he pay to the Grantee ſuch a**

Mortgage, what.

Day 100 l. then the Grantor to re-enter: In this Caſe, the Grantee is called Tenant in Mortgage; and the Reaſon why it is called a Mortgage, is becauſe it is a dead Pledge until the Money paid.

The Intereſt in Lands mortgaged, is in Law in the Mortgagee, before the Forfeiture.

A If Lands be mortgaged to one, the Intereſt in Law in theſe Lands is in the Mortgagee before the Forfeiture of them: *Mich.* 23 *Car. B. R.* For he hath purchaſed the Lands upon a valuable Conſideration, as the Law will intend; and though the Mortgagor may redeem them in Reſpect of the Agreement betwixt the Parties, yet it is not known, whether he will do it or no; and if he do it not, then the Eſtate in Law is abſolute in the Mortgagee, without any other Act to be done to paſs the Eſtate; but the Mortgagor hath an equitable Right of Redemption.

If the Mortgage be forfeited, the Mortgagee may bring Ejectment without Entry, and why.

B Where a Mortgage is forfeited, the Mortgagee may bring an Ejectment without an actual Entry; for he is in Poſſeſſion upon the executing of the Conveyances. Alſo in an Ejectment to be brought upon it, Leaſe, Entry and Ouſter muſt be confeſſed, which is ſufficient; but where a Condition is to be defeated, there muſt be an actual Entry before the Party can bring an Ejectment.

An Act to enable Infants to convey Eſtates in Truſt, or Mortgages whereof they are ſeiſed or poſſeſſed.

7 Annæ.

C There was an Act made 7 *Annæ*, entituled, *An Act to enable Infants who are ſeized or poſſeſſed of Eſtates in Fee, Truſt, or by Way of Mortgage, to make Conveyances of ſuch Eſtates.* See the Act in Title Infant.

Who cannot redeem a Mortgage.

D It is a Rule in Chancery, That none can come to redeem a Mortgage when the Mortgagee cannot compel the Payment of the Mortgage-Money; for the Remedy ought to be reciprocal. *Chan. Rep. fol.* 2.

Where the Mortgagee ſhall loſe his Intereſt.

E A Mortgagee refuſing to receive his Money on Tender after Forfeiture, ſhall loſe his Intereſt from the Tender. *Chanc. Rep.* 29.

When the Principal ſhall be taken to begin between Aſſignee and Mortgagor.

F All Money really due and paid by the Aſſignee to the Mortgagee, ſhall be taken as Principal againſt the Mortgagor from the Time of the Aſſignment. *Ibid.* 68, 258.

Twenty Years a fit Time to limit what Time a Mortgage ſhall be redeemable.

G The Court were of Opinion, That twenty Years in Imitation of the Statute of Limitation for real Actions, was a fit Time to limit what Time a Mortgage ſhall be redeemable. *Ibid.* 102, 220.

The Law gives the Money to the Executor, where no other is named.

How it is where the Mortgage-Money is to be paid to the Heirs or Executors.

H The Law always gives the Money to the Executor where no Perſon is named to whom to be paid: Now where the Money is appointed to be paid to the Heirs or Executors, there the Party who is to pay it, may pay it at the Day either to the Heir or Executor: But when the Day is paſt, the Election to pay it it to the Heirs or Executors is alſo gone and forfeited in Law; and it is all one in Equity, as if either Heir or Executor were named; and then Equity follows the Law, and gives it to the Executor; for in natural Juſtice, the principal Right of the Mortgagee is to the Money, and his Right to the Land is only a Security for the Money; therefore when the Security deſcends to the Heir of the Mortgagee, attended with an Equity of Redemption, as ſoon as the Mortgagor pays the Money, the Lands belong to him; and only the Money to the Mortgagee, which is merely perſonal, and ſo accrues to the Executors or Adminiſtrators of the Mortgagee. *Chanc. Rep.* 284, 285, 286.

Where Equity gives it to the Executor.

How it comes to accrue to the Executors or Adminiſtrators.

A **The** Lord Keeper *Finch* was of Opinion, That all Mortgages ought to be looked upon as Part of the perſonal Eſtate, unleſs the Mortgagee in his Life-time, or by his Will, do otherwiſe declare and diſpoſe of the ſame. *Ibid.* 286.

All Mortgages ought to be looked upon as Part of the perſonal Eſtate, if not diſpoſed of by Will or otherwiſe.

B **Where** the Mortgagor retains the Poſſeſſion, and pays the Intereſt, and levies a Fine to another Mortgagee; this ſhall not bar the firſt Mortgagee. 1 *Lev.* 272.

The Mortgagor keeps the Poſſeſſion, levies a Fine, and pays the Intereſt; it is no Bar.

C **Mortgagee** for Years out of actual Poſſeſſion, aſſigns off from the Land: Whether good or not? See 3 *Lev.* 388. *Vide* 270, 271, 272.

Mortgagee for Years, out of actual Poſſeſſion, aſſigns off from the Land.

D **By** the Statute of 4 & 5 *W. & M. cap.* 20. *For Docketting of all Judgments*, it is enacted, That no Judgment not docketted as that Statute requires, (which ſee in Title **Judgment**) ſhall affect any Purchaſor or Mortgagee, or have any Preference againſt their Heirs, Executors, and Adminiſtrators, in their Adminiſtration of their Anceſtors, Teſtators, or Inteſtates Eſtates.

What Judgments ſhall not affect Mortgagees.

4 & 5 W. & M. c. 20.

E **By** a Statute 4 & 5 *W. & M. cap.* 16. intitled, *An Act to prevent Frauds by clandeſtine Mortgages*, it is enacted, that if any Perſon ſhall borrow any Money, or, for any other valuable Conſideration for the Payment thereof, voluntarily give, acknowledge, permit, or ſuffer to be entered againſt him or them, one or more Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, to any Perſon or Perſons, Creditor or Creditors: And if the Borrower or Debtor ſhall afterwards take up, or borrow, any other Sum or Sums of Money of any other Perſon; or for other valuable Conſiderations become indebted to ſuch Perſon, and for the ſecuring of Repayment and Diſcharge thereof, ſhall mortgage his, her, or their Lands or Tenements, or any Part thereof, to the ſaid ſecond or other Lender of the ſaid Money, Creditor or Creditors, or to any Perſon in Truſt, for or to the Uſe of ſuch ſecond or other Lender, Creditor or Creditors, and ſhall not give Notice to the ſaid Mortgagee or Mortgagees of ſuch Judgment, Statute, or Recognizance, in

4 & 5 W. & M. c. 16. to prevent clandeſtine Mortgages.

Shall mortgage.

And not give Notice.

Writing under Hand, before the Execution of the ſaid Mortgage; unleſs ſuch Mortgagor, or his Heirs, on Notice to be to him or them given by the Mortgagee of the ſaid Lands and Tenements, his Heirs, Executors, Adminiſtrators, or Aſſigns, in Writing under his or their Hands, and Seals, atteſted by two or more ſufficient Witneſſes, of any ſuch former Judgment, Statute or Recognizance: Shall within ſix Months pay off and diſcharge the ſaid Judgment, Statute or Recognizance, and all Intereſt and Charges due thereon; and cauſe and procure the ſame to be vacated or diſcharged of Record, that the Mortgagor of the ſaid Lands, his or their Heirs, Executors, Adminiſtrators, or Aſſigns, ſhall have no Benefit or Remedy againſt the ſaid Mortgagee, his Heirs, Executors, or Aſſigns, or any of them, in Equity or elſewhere, for the Redemption of the ſaid Lands, or any Part thereof: But the ſaid Mortgagee, his Heirs, Executors, Adminiſtrators and Aſſigns, ſhall and may hold and enjoy the ſaid Lands, for ſuch Eſtate and Term therein, as were or was granted to the ſaid Mortgagee, againſt the ſaid Mortgagor, and all Perſons lawfully claiming by, from, or under him or them, freed from Equity of Redemption; and as fully to all Intents and Purpoſes whatſoever, as if the ſame had been abſolutely purchaſed without any Power of Redemption.

Unleſs ſhall pay off the ſame.

Shall have no Benefit of Redemption.

But hold the ſame freed and diſcharged thereof.

A **And alſo,** That if any Perſon who hath once mortgaged his Lands, or ſhall after the firſt Day of *May*, 1693, mortgage any Land, *&c.* to any Perſon for Security of Money lent, or otherwiſe accrued or become due, or for other valuable Conſiderations: And if the Mortgagor ſhall again mortgage the ſame Lands, or any Part thereof, to any other Perſons, for valuable Conſiderations, (the ſaid former Mortgage being in Force) and ſhall not diſcover to the ſaid ſecond and other Mortgagee, the former Mortgage or Mortgages in Writing under Hand; that then the ſaid Mortgagor, his Heirs, Executors, Adminiſtrators, or Aſſigns, ſhall have no Relief or Equity of Redemption againſt the ſaid ſecond or After-Mortgagee or Mortgagees: But ſuch Mortgagee and Mortgagees, his or their Heirs, Executors, Adminiſtrators, and Aſſigns, ſhall and may hold and enjoy ſuch more than once mortgaged Lands and Tenements, for ſuch Eſtate and Term therein, as were or was granted and conveyed by the ſaid Mortgagor or Mortgagors againſt him or them, his or their Heirs, Executors, or Adminiſtrators, freed from Equity of Redemption, and without any Power or Liberty of Redemption.

A Second Mortgage without Notice.

Shall have no Equity of Redemption.

B **Provided,** That if there happen to be more than one Mortgage at the ſame Time, made by any Perſon or Perſons to any Perſon or Perſons, of the ſame Lands and Tenements, the ſeveral late or Under-Mortgagees, his or their Heirs, Executors, Adminiſtrators, or Aſſigns, ſhall have Power to redeem any former Mortgage or Mortgages, upon Payment of Principal, Intereſt, and Coſt of Suit, to the prior Mortgagee, his or their Heirs, Executors, Adminiſtrators, or Aſſigns. **Provided,** That nothing in this Act ſhall bar any Widow of her Dower, who did not legally join with her Huſband in ſuch Mortgage.

A **A Man** mortgages to pay to his Heirs, Executors, or Aſſigns, ſuch a Sum, the Mortgagee dies, and makes his Heir within Age his Executor: The Mortgagor pays the Money at the Day to the Heir, the Heir hath not the Money as Heir, but the ſame ſhall be Aſſets as Executor. 3 *Leon.* Caſe 59.

The Mortgage Money ſhall not go to the Heir, but be Aſſets.

B **But** it hath been adjudged, That upon a Mortgage of Land in Fee, and the Condition being to pay to the Heirs or Aſſigns of the Mortgagee, the Heirs, and not the Executors, ſhall have the Money. *Chanc. Rep.* 88. *Quære.*

Where the Heir, and not the Executor, ſhall have the Mortgage Money.

C **Whether** an Equity of Redemption in the Heir of the Mortgagor be Aſſets in Equity. *Chanc. Rep.* 148, and 12.

Whether an Equity of Redemption be Aſſets in Equity.

D **An** old Mortgage aſſigned to another, ought to be taken as a new Mortgage, from the Time of the Aſſignment. *Chanc. Rep.* 218.

When an old Mortgage aſſigned, ſhall be taken as a new Mortgage.

E **A Mortgagee** without Notice of a precedent Incumbrance, buys in an Incumbrance precedent to that Incumbrance, which precedes his Mortgage: He ſhall not be impeach'd in Equity, but upon Payment of all that is due to him on both the Eſtates. *Chanc. Rep.* 149, 150.

There are three Incumbrances, the laſt purchaſes in the firſt: He ſhall hold the Eſtate 'till both his Incumbrances are ſatisfied.

F **A Deviſe** of Land to *A.* for Life, Remainder to *B.* in Fee, the Lands were before mortgaged for 100 *l.* *A.* is made Executor, and Aſſets are left to pay the Debts: *B.* prayed, that the Aſſets might go to pay the Mortgage, as in the Caſe of an Heir at Law. *Curia.* The Heir in ſuch Caſe may be relieved, but not a Deviſee. So decreed, That Tenant for Life ſhould pay one Third, and he in Remainder two Thirds, to redeem. *Chanc. Rep.* 271.

Deviſe to *A.* for Life, Remainder to *B.* in Fee, of mortgaged Lands: *A.* is Executor; Heir to be aſſiſted, but Deviſee not. What each ſhall pay.

G **A Jointreſs** of mortgaged Lands: Decreed, That ſhe paying the Mortgage, ſhould hold over till ſhe and her Executors ſhould be paid with Intereſt. *Ibid.* 271.

How in Caſe of a Jointreſs of mortgaged Lands.

H **A Mortgage** with a Proviſo that future Intereſt, if not paid, ſhall be taken as Principal, and bear Intereſt, the Proviſo is void. *Salk.* 449.

Where a Proviſo void.

I **A Mortgagee** or Purchaſor precedent, though by a defective Conveyance, ſhall be preferred before Aſſignees of Commiſſioners of Bankrupts. *Ibid.*

Aſſignees of a Bankrupt.

K **Where** Perſonal Eſtate ſhall be applied to pay off a Mortgage in Diſcharge of Lands. *Ibid.* 449, 450.

Perſonal Eſtate.

Though no Money appear'd to be paid where the Mortgage ſhall be good between the Parties and to the Aſſignee.

Though it does not appear that any Money was paid upon an original Mortgage, yet the firſt Mortgage was good between the Parties, and being ſo when the firſt Mortgagee aſſigns for a valuable Conſideration, this is all one as if the firſt had been upon a valuable Conſideration; for now the ſecond Mortgagee ſtands in his Place, and is within the Proviſo of the Statute of 27 *Eliz. cap.* 4. *Skinner* 423. A

Mortgagor not a Diſſeiſor, and Mortgagee may aſſign.

Though the Mortgagor be not Tenant at Will, to the ſecond Aſſignee, yet he is not a Diſſeiſor, but a Tenant at Sufferance; and therefore the Mortgagee's Eſtate not being diveſted, may aſſign though the Mortgagor be not a Party, and the Mortgagee never in Poſſeſſion. *Ibid.* B

Where the Mortgagor ſhall be conſtrued Tenant at Will to the Mortgagee and his Aſſigns.

The Mortgagee for himſelf, his Executors, Adminiſtrators, and Aſſigns, covenants with the Mortgagor that he ſhall enjoy and take the Profits 'till Default of Payment, the Covenant being for his Aſſigns he ſhall be preſumed Tenant at Will to all the Aſſigns as well as to the firſt Mortgagee. *Ibid.* C

Where Mortgagor no Diſſeiſor.

Where a Mortgage for Years is divers Times aſſigned over, yet the Mortgagor (though he continue in Poſſeſſion) is no Diſſeiſor ſo the Deed be delivered upon the Land. *Comb.* 249. D

Where a further Aſſurance to be abſolute.

Where a Mortgagor covenants to make a further Aſſurance after a Default, the Aſſurance ought to be abſolute, but not to releaſe his Equity, nor with Warranty. *Ibid.* 146, 147, 318. E

Mortgage not affected by a Fine.

A Mortgage is not affected by a Fine levied by a Mortgagor who continued in Poſſeſſion, *&c.* *Carthew* 101, 414. F

Mortgagor to pay Money due upon a Bond before he can redeem.

Where the Mortgagee lends more Money upon Bond to the Mortgagor, he ſhall not redeem without paying both; but if he mortgage the Equity of Redemption to another, it ſhall not be affected with that Bond. 3 *Salk.* 84, 240. G

Mortgage not to be made good by Matter ſubſequent.

Where Matter ſubſequent ſhall not make the Deed a Mortgage if it was not ſo originally. *Ibid.* 241. H

Money paid by the Aſſignee to be Principal.

Where a Mortgagee aſſigned the Mortgage, all the Intereſt then due and paid by the Aſſignee ſhall be Principal. *Ibid.* I

Where the Heir to have the Redemption Money.

Where the Heir of the Mortgagee ſhall have the Redemption Money, where not. *Ibid.* K

Mortgagee can't make a Leaſe, or Preſent.

A Mortgagee cannot make a Leaſe of a Houſe in Mortgage before a Forecloſure, nor preſent on an Avoidance. *Mod. Caſes in Law and Equity* 1. L

A The ſubſequent Mortgagee prays to redeem the firſt Mortgage on Payment of what was due, and pending that Suit, the firſt Mortgagee ſets up another Mortgage prior to them all; and a Trial at Law was decreed whether that Mortgage was executed; and if it was, how much Money was due on it. *Mod. Caſes in Law and Equity* 38.

Subſequent Mortgagee prays to redeem, and a prior Mortgage ſet up.

B Where a Bill was brought againſt the Mortgagee to compel him to Reconvey, on Payment of Principal and Intereſt. *Ibid.* 120.

Bill to Reconvey.

C *Note*, Pending a Suit by the Creditors againſt the Mortgagor to ſell, the Mortgagee got a Decree to Forecloſe. *Ibid.* 153.

Forecloſure pending a Suit.

Mortuaries.

D It hath been held, That anciently the Parſon had a Right to have the ſecond beſt Beaſt for a Mortuary, and that he might ſeize it where he could find it, if it were due. See Clergy Man's Law, 474, 475.

Mortuaries, what.

E Mr. Selden tells us, in his Hiſtory of Tithes, 287. That the Uſage anciently was (according to the Canons) to bring the Mortuary along with the Corps when it came to be buried, and to offer it at the Church, as a Satisfaction for the ſuppoſed Negligence the Defunct had been guilty of in not paying of his perſonal Tithes, and from thence it was called a Corſe-Preſent.

F Whereas much Trouble did ariſe by Reaſon of demanding, receiving, and claiming of Mortuaries, otherwiſe *Corſe-Preſents*: For the ſettling whereof for the future, it was by a Statute made 21 *H.* 8. *cap.* 6. enacted, That no Mortuary ſhall be demanded of any Perſon, but only in ſuch Place where they heretofore have been uſed to be paid and given, and thoſe after the Rates following:

The Reaſon of aſcertaining of Mortuaries.

21 H. 8. cap. 6.

None to be paid but where uſed to be paid.

G If the Goods of the Party, at the Time of his Death, be under ten Marks, then nothing to be paid.

What the Payments muſt be.

Where above ten Marks, and under thirty Pounds, then three Shillings and four Pence. A

Where thirty Pounds, and under forty Pounds, then ſix Shillings and eight Pence. B

Where forty Pounds, or above, whatever the Sum be after Debts paid, then ten Shillings, and no more. C

The Penalty of taking of more.

Taking of any more is by this Statute a Forfeiture of forty Shillings. *Sect.* 2. D

Motion in Court.

Motions, what.

Motions in the Court of King's Bench are made by Serjeants at Law, or Barriſters at Law, Attorney and Solicitor General; and no other Perſon ought or can move them. E

Monday is a ſpecial Day for Motions in *B. R.*

Monday is a ſpecial Day for Motions in this Court, by the antient Courſe. I ſuppoſe it is ſo, becauſe the Court and Counſel cannot be ſo well prepared to ſpeak in ſolemn Matters on that Day, in regard of the Lord's Day, which immediately precedes: *Mich.* 22 *Car. B. R.* Yet Motions are made upon any Day, as the Buſineſs of the Court or the Day will permit. F

The Court ought not to be moved for a Thing, againſt which they have given their Opinion.

One ought not to move the Court for a Thing againſt which they have delivered their Opinions: *Trin.* 22 *Car. B. R.* But ought to reſt ſatisfied with the Judgment of the Court, and to ſubmit thereunto. G

If the Court have denied a Motion, it ought not to be moved again without Leave.

Where a Motion hath been denied, the ſame Matter ought not to be moved again by another Counſel, without acquainting the Court thereof, and having their Leave for the ſame. H

Money ordered to be brought into Court upon Motion, ought not to be taken out without Motion and Rule of Court.

If Money be upon a Motion ordered to be brought into the Court, and is accordingly brought in, it ought not to be taken out of the Court, but upon a Motion and Rule of the Court made therein: *Hill.* 22 *Car. B. R.* For when it is brought into Court, it is in the Cuſtody of the Court, and to be diſpoſed of by the Directions of the Court only. I

If

A **If** any Thing be moved to the Court upon a Record, if the Record upon which the Motion is made, be not in Court when the Motion is made, the Court will make no Rule upon ſuch a Motion: *Hill.* 22 *Car.* *B. R.* For the Court will be ſatisfied by the Record, whether the Matter of the Record upon which the Motion is grounded, be ſo as is ſuggeſted by the Counſel, and will not reſt upon Suggeſtions made at the Bar; for the Court judges not upon *allegata* only, but upon *allegata & probata.*

The Court will make no Rule upon a Motion relating to a Record, unleſs the Record be in Court.

B **If** there be divers Rules of the Court made in a Cauſe, and the Party intends to move upon theſe Rules, he muſt produce the Rule that was laſt made in the Cauſe, and move upon that. *Paſch.* 23 *Car.* *B. R.* Yet it is neceſſary alſo to have the Rules and Copies of the Affidavits made in the Cauſe, to ſatisfy the Court how the Cauſe ſtands in Court, and how it hath been proceeded in from Time to Time, and how the Rules depend upon one another; But the laſt Rule is the moſt material.

If ſeveral Rules have been made in a Cauſe, the Party who would move upon thoſe Rules, muſt produce the laſt, and move upon that.

C **One** Party ought not to ſurprize another by a Motion in Court, but he ought to move in ſuch convenient Time, that the other Party againſt whom the Motion is made, may have Time to be heard, and to make his Defence: *Paſch.* 23 *Car.* *B. R.* And this the Court will grant.

One Party ought not to ſurprize the other by a Motion.

D **One** ought not to move the Court for a Rule for a Thing to be done, which may by the common Rules of Practice of this Court be done without moving the Court for it; much leſs ought the Court to be moved for the doing of that which is againſt the common Rules and Practice of the Court. 24 *Car.* *B. R.* For the Court is not to be troubled, nor the Client put to the Charge of needleſs Motions, nor of Motions not to be granted, and the former Sort of theſe Kinds of Motions do ſavour of Ignorance, and the latter of too much Preſumption; the former are to put the Court to needleſs Trouble, and the latter are moved againſt the Honour of the Court.

The Court ought not to be moved for a Rule to do a Thing that may be done by the Rules of Practice; nor for what is againſt the Practice of the Court.

E **When** a Thing queſtionable between the Parties, is to be moved to the Court for the ſettling thereof; he that intends to move it, muſt give the adverſe Party timely Notice of the Day (as near as he can) when he will move it: *Mich.* 1650. *B. S.* And upon what he intends to move, that he may be prepared to anſwer the Motion at the Time when he moves, for the quicker Diſpatch of Buſineſs, and for the ſaving farther Charges.

When a Thing in Doubt between the Parties is to be moved; he that intends to move, muſt give the adverſe Party Notice of the Day.

F **If** a Rule of Court was grounded upon an Affidavit, he that will move the Court to ſet aſide the Rule, muſt when he moves, produce the Copy of the Affidavit in Court: *Hill.* 1649. 22 *Feb.* *B. S.*

He who moves to ſet aſide a Rule grounded on an Affidavit, muſt produce it.

That the Court may be informed upon what Grounds the Rule was made, and whether there be Cauſe ſhewed upon the Motion, ſufficient to induce them to ſet aſide the Rule.

None may move in his own Cauſe.

A It is againſt the Courſe and Practice of the Court for any Perſon to make a Motion in his own Cauſe: 24 *Maii, Paſch.* 1650. *B. S.* So ſaid in one *Thruſton* and *Maſon*'s Caſe, *viz.* for a Counſellor to do it.

Money paid to the Box upon the granting of Motions.

B When the Court doth grant a Motion for a *Habeas Corpus, Certiorari, Mandamus, &c.* or gives Judgment in any Caſe, there is 1 *s.* paid to the Box; but the laſt Day of a Term there is paid to the Box 2 *s.* for every Motion granted, and 1 *s.* for every Motion denied.

Not uſual to move for a Trial at Bar the laſt Day of the Term.

C It is not uſual to move for a Trial at the Bar upon the laſt Day of the Term: 2 *Julii,* 1650. *B. S.* Nor for the Secondary to make a Report, nor for a Prohibition, nor to vacate a Judgment, nor ſuch like Caſe of Diſpute, except both Parties be in Court, and are contented with the Motion, and prepared to ſpeak in it; and if ſuch Motions be made, the Court will make no Rule upon them.

Several Things not to be moved for in one Motion.

D In the Caſe of one *Topleſs* verſ. *Rag, Hill.* 1657. *B. S.* It was ſaid that one ought not to move for ſeveral Things in one Motion; and therefore upon a Motion that one in an Ejectment, might be made Party to defend his Title, and that he might alſo imparl to the next Term, the Party was admitted to be made a Party, and ordered to move again at another Time for an Imparlance: To move two Things in one Motion, the Court calls grafting upon a Motion; but ſuch Motions have been oftentimes allowed.

In *C. B.* a Serjeant may not move for a Clerk of the Court, and then for his Client.

E By *Glyn* Chief Juſtice, It is not the Cuſtom or the Practice of the Common Pleas for a Serjeant at Law to move for a Clerk of the Court, and afterwards for his Client: *Mich.* 1655. *B. S.* For it ſeems it is not intended there, that he doth move without a Fee for the Clerk of the Court, and therefore, if he ſhould be ſo heard, he would have a double Motion at one Time, which no Court doth allow; but in this Court it is uſually done, ſo that it ſeems the Counſel here are more civil to the Clerks of the Court, than they are in the Common Pleas.

But it is uſually done in *B. R.*

He who makes an Argument, is allowed a Motion for it.

F Every Perſon who makes a ſolemn Argument at the Bar, is allowed by the Court a Motion for his Argument.

Attachments or Matters in Law muſt not be moved for the laſt Day of the Term.

G It is againſt the Rule and Practice of this Court, to move for an Attachment, or any Matters in Law, upon the laſt Day of any Term; except it be where the Caſe is peremptory, or of Neceſſity to be moved then. *Paſch.* 23 *Car. B. R.* Becauſe the other Party cannot have Time to make his Defence by anſwering the Motion; and that Day is a Day

appointed

appointed chiefly for Motions, to prepare Buſineſſes againſt the Aſſizes, or the Term next to come.

A **The** three laſt Days of the Term, if it be an iſſuable Term, are appointed to hear Motions, and no other Buſineſs but Motions and Crown-Office Cauſes, except upon ſpecial Occaſions: But if it be not an iſſuable Term, then the two laſt Days are only for the hearing of Motions; for in thoſe Terms, there is leſs Occaſion for Motions, than in iſſuable Terms: 30 *Jan.* 1650. *B. S.* The iſſuable Terms are *Hillary* Term and *Trinity* Term; and they are ſo called, becauſe, though there be Iſſues joined in every Term, yet not ſo many by much as in thoſe Terms, in Regard of the Cauſes which are to be tried all *England* over, at the Aſſizes, which follow the next Vacations after the ſaid Terms; *viz.* the Lent-Aſſizes and the Summer-Aſſizes, as they are commonly called.

What the three laſt Days of the Term are appointed for.

Which are the iſſuable Terms, and why ſo called.

B **No** Motion to quaſh Indictments removed by *Certiorari* after the Recognizance for Trial is forfeited. *Salk.* 380.

To quaſh Indictments.

C **No** Motion for a peremptory *Mandamus* after a Verdict for a falſe Return, till four Days after the Return of the *Poſtea.* *Ibid.* 431.

Mandamus for a falſe Return.

D **If** a Plaintiff moves to amend his Declaration the ſame Term the Plea comes in, he need not give new Rules to plead. *Ibid.* 520.

When not to give new Rules to plead.

E **No** Motion for a new Trial after Motion in Arreſt of Judgment. *Ibid.* 647.

New Trial.

F **Where** a *Sci. fa.* ſhall iſſue on Motion, and where without. *Vide Salk.* 598.

Scire facias.

G **A Franchiſe** is not to be allowed on Motion, unleſs formerly pleaded, and is upon Record. *Ibid.* 450.

Franchiſe.

H **Where** a Fine is ſet for a forcible Entry, the Conviction is not to be quaſh'd on Motion. *Ibid.*

Conviction of forcible Entry.

I **How** to move to make a Record a *Concilium.* See *Salk.* 565.

Concilium.

Mulier, See Baſtard.

Murder.

Murder.

See **Magiſtrate.**

Murder, what.

A **Murder is the wilful killing of a Man upon Malice prepenſed, either expreſſed by the Party, or implied by Law; ſo as he dies within a Year and Day after the Fact.** 5 Mod. 291.

All Trials for Murder muſt be in the County where the Fact was committed.

B **It** is againſt a fundamental Rule of the Law, that a Trial for Murder by Appeal or otherwiſe, ſhould be tried out of the County where committed. *Cro. Car.* 247. *pl.* 8.

Murder to kill an Officer, though the Proceſs be erroneous.

C **Although** a Proceſs be apparently erroneous, yet if a Miniſter of Juſtice is killed in the Execution of it, it is Murder. 9 *Rep.* 68. *a. Cro. Jac.* 280.

Murder to kill a Magiſtrate in the Execution of his Office.

D **It** is Murder to kill any Magiſtrate or Miniſter of Juſtice in the Execution of his Office. 9 *Rep.* 68. *a. Cro. Jac.* 280.

So to kill a Sheriff, Conſtable, *&c.* or any of their Aſſiſtants.

E **So** alſo to kill a Sheriff, Conſtable, Watchman, or any Perſon coming to their Aſſiſtance. 9 *Rep.* 68. *Cro. Jac.* 280.

Murder to kill a Watchman.

F **If** a Watchman be killed ſtaying of Night-Walkers, it is Murder. *Cro. Jac.* 280.

Killing of an Officer in making of an Arreſt, is Murther.

G **The** reſiſting and killing of an Officer when he comes to make an Arreſt in the King's Name, is Murder. *Cro. Jac.* 280. *Cro. Car.* 183. *pl.* 1.

Where the Circumſtances of the Fact makes it Manſlaughter, and where Murder.

H **Where** a Man's Son was beaten and complaining of it to his Father; the Father not having any Malice before againſt him who beat him, but in that Anger beating of him, of which ſtroke he died, the Law ſhall adjudge it to be upon that ſudden Occaſion, and ſtirring of Blood that he made the Aſſault, and not upon Malice, unleſs it be found; and though the Diſtance of the Place where his Son complained was a Mile, it is not material, being all upon one Paſſion. *Cro. Jac.* 296. *pl.* 1. So it is in Caſe of a Couſin, Brother or Servant, and it is only Manſlaughter, not Murder.

What is Murder in killing of an Officer, and what not.

I **Where** a Bailiff who is not duly executing of his Office is killed, it is not Murder; for to make it to be Murder, there muſt be *malitia præcogitata*, or *malitia implicita*, as to murder one ſuddenly, or in Reſiſtance of an Officer doing his Office: But the laſt ought to be where he is duly executing of his Office, by ſerving of the Proceſs of the Law, wherein he is aſſiſted, *cum poteſtate Regis & Legis*. See *Cro. Car.* 537. *pl.* 2. 538.

Note, It is the duly executing of his Office that makes it to be Murder, not where he acts illegally.

A **What** ſhall be Murder and what ſhall be Manſlaughter, very well argued on both Sides, but no Judgment given. 5 *Mod.* from 287 to 295.

What ſhall be Murder, and what not.

B **If** one makes a wry or diſtorted Mouth upon another, the other immediately purſues and kills him, it is Murder. *Cro. Eliz.* 779.

Making of a wry Mouth at a Man, is no Excuſe for Murder.

C **Where** a Boy was upon a Tree in a Park cutting of Wood, and the Keeper bid him come down, which he did; then he ſtruck him ſeveral Blows upon his Back with his Cudgel; and afterwards with a Rope tied him to his Horſe-tail, and the Horſe run away with him, which was the Cauſe of his Death, and he flung him into a Parcel of Buſhes; this was held to be Murder; for when the Boy came down at his Command, and he uſed him as aforeſaid, the Law implies Malice. *Cro. Car.* 239. *pl.* 6.

What ſhall be a Murder.

Where the Law implies Malice.

D **Poiſon** was prepared for *A.* and *B.* a Stranger, came and drank it up, and died: This was adjudged Murder, though not intended for *B.* 9 *Rep.* 81.

Murder, where one is poiſoned inſtead of another.

E **He** who gave the Stroke, and he who was aſſiſting, are both equally guilty. 3 *Salk.* 39.

Who equally guilty.

F **Indictment** on the Statute of Stabbing, omitting theſe Words, having not a Weapon then drawn, is not good. 3 *Salk.* 191.

Indictment for ſtabbing.

G **See** two Perſons indicted of Murther, and one of them acquitted, tho' they were both doing an unlawful Act. *Mod. Caſes in Law and Equity* 164.

Two indicted and one acquitted.

H **Words** are not a ſufficient Provocation to make it Manſlaughter. *Comberb.* 406, 407, *&c.*

Manſlaughter.

I **See** there divers good Caſes put, of the Difference between Manſlaughter and Murder.

Manſlaughter and Murder.

K **The** King's Bench may bail in Caſes of Suſpicion of Murther only. *Comberb.* 298.

Bail.

L *W.* the Party kill'd, was Servant to *K.* who had an Intent to turn him away, and ſent for his Key; it was ſaid to *K.* that *W.* refuſed to bring the Key; upon which *K.* fetch'd his Sword, and went and expoſtulated with *W.* who ſaid he might have the Key if he would, and then *K.* ſtruck *W.* with the Sword, and *W.* having a Sneed in his Hand, ſtruck *K.* with the Sneed, which did not hit him; after this *W.* followed *K.* and punched him ſeveral Times with the Sneed, and *K.* thruſt him with his Sword and killed him: Upon a ſpecial Verdict held to be Murder at Common Law, and the Denial

What conſtrued Murder, and the Provocation not ſufficient to make it Manſlaughter.

of the Key no ſufficient Provocation to extenuate the Fact to Manſlaughter, but held not to be within the Statute of Stabbing, tho' a Sneed was a Weapon drawn within the Meaning of that Statute. *Skin. 666.*

Maſter ſtriking his Servant.

A Smith ſtruck his Apprentice with a Bar of Iron, adjudg'd to be Murder. *Ibid. 668.* A

Pardon.

Pardon of Murder pleaded, but without a Writ of Allowance, not good. *Carthew* 120. B

Negative Pregnant.

See **Demurrer.**

Negative Pregnant, what.

A Negative pregnant is when an Action is brought againſt a Man, and he pleads in Bar of the Action a Negative Plea, which is not ſo ſpecial an Anſwer to the Action, but it includes alſo an Affirmative; as for Inſtance: He in Reverſion brings a Writ of Entry in caſu Proviſo, **upon an Alienation made by the Tenant for Life, ſuppoſing that he has aliened in Fee, which is a Forfeiture of his Eſtate: The Tenant comes and pleads that he hath not aliened in Fee. This is a Negative wherein is included an Affirmative; for though it be true, that he hath not aliened in Fee, yet it may be he hath aliened in Tail, which is alſo a Forfeiture of his Eſtate.** Hill. 23 Car. 1. B. R. C

What it is.

By *Hoſkins* Serjeant, *arguendo*, A Negative Pregnant is where a Negative carries an Affirmative in his Belly. *Lit. Rep.* 65. D

What are Negative Pregnants, and what not.

See much good Matter, what are Negative Pregnants, and what not. 2 *Leon.* Caſe 248. E

An Inſtance of it.

Where a Breach is aſſigned, that he was not ſeiſed of a good Eſtate in Fee: And the Bar is, That he was, *&c.* notwithſtanding any Act done by him, which is pregnant and incertain. *Lit. Rep.* 64. F

Where it is not in a Condition of a Bond to deliver Poſſeſſion.

A Condition of a Bond was not to deliver Poſſeſſion to any but to the Leſſee, or to him who ſhould lawfully evict him: He pleads, That he did not deliver it to any but thoſe who lawfully evicted him. G

A him. *Obj.* That he ſhould have ſaid, who evicted him. But *per Curiam*, The Pleading being according to the Words of the Condition, it is ſufficient, it being in the Negative; and the Plaintiff ought to have replied, and aſſigned a Breach. 1 *Lev.* 83.

The Plea being according to the Words of the Condition, is well.

New Aſſignment, See Pleas and Pleadings.

Nil Debet.

A NIL Debet is a Plea to be pleaded to an Action of Debt, when the Money is paid.

Nil Debet, what.

B Covenant in an Indenture, and Breach aſſigned in Non-payment of Rent: *Nil debet* is no Plea; becauſe it is only Argumentative. See 3 *Lev.* 730. But it had been good in Debt.

Nil Debet is no Plea in Covenant, but it is good in Debt.

C Where *Nil debet* is a Plea, and where not. See *Mod. Caſes in Law and Equity* 106, 323, 382. and hereafter Title **Pleading.**

Nil habuit in Tenementis, &c.

D This is a Plea which is pleadable in an Action of Debt only, brought by Leſſor againſt Leſſee for Years, or at Will, without Deed; but if there be an Indenture under the Defendant's Hand and Seal, he then is eſtopped to plead this Plea.

Nil habuit in Tenementis, &c. what.

How to reply to *Nil habuit in Tenementis.*

In Debt for Rent, the Defendant pleads *Nil habuit in tenementis tempore dimiſſionis*: The Plaintiff ſays, *Quod habuit in tenementis præd.* and Verdict and Judgment for the Plaintiff. And aſſigned for Error, That the Replication was not good; for he ought to have ſhewn what Eſtate he then had, ſo as the Court might adjudge thereupon. And of that Opinion was the Court: And it had been naught upon a Demurrer, but being after a Verdict it is good. *Cro. Jac.* 312. *pl.* 12. A

Naught upon a Demurrer, but good after a Verdict.

Tho' *Nil habuit* may be pleaded in Debt for Rent, yet it cannot be pleaded in Covenant for a Sum in groſs.

Tho' *Nil habuit in tenementis tempore dimiſſionis* may be pleaded to an Action of Debt for Rent, yet it cannot be pleaded in Covenant for a Sum in groſs. 2 *Vent.* 99. B

How to plead it.

What is ſufficient to intitle the Plaintiff.

In pleading of *Nil habuit in Tenementis,* it is a good Replication for the Plaintiff to ſay, That he was ſeized in Fee, *Et hoc petit quod inquiratur per patriam*: And if upon the Trial a leſſer Eſtate is found; yet if it is ſufficient to entitle the Plaintiff to make a Leaſe, it is good enough. 10 *W.* C E

No Plea to Debt for Rent, upon an Indenture of Leaſe in Writing.

Debt for Rent upon an Indenture: *Nil habuit in Tenementis* is no Plea; becauſe it is an Eſtoppel, and a general Demurrer will ſerve. 3 *Lev.* 146.

It is good upon a Deed-Poll.

It is not ſufficient to reply *bonum Titulum*, but muſt ſhew what Title.

In Debt, or Covenant for Rent, upon a Deed-Poll, the Defendant pleads, *Nil habuit in Tenementis*, which he may: The Plaintiff replied, That he had *bonum Titulum unde potuit dimittere*. The Defendant demurs generally; and the Replication not ſhewing what Title he had, it was held ill: 3 *Lev.* 193. But after a Verdict, it had been good. 1 *Mod.* 292. F

Vide **Debt** 350. A.

Niſi Prius.

Niſi Prius, what.

A Writ of Niſi Prius **is where an Iſſue is joined, then there goes a** Venire **to ſummon the Jury to appear at a Day in Court; and upon the Return of that Writ, with the Panel of Jurors Names, the Record of** Niſi Prius G is made up and ſealed; and there goes out a Writ of Diſtringas to have the Jurors in Court at a certain Day, Niſi Juſtic' Domini Regis ad Aſſiſas, ſuch a Day, in ſuch a County, Prius Venerint, to try the Iſſue joined between the Parties.

A That no Record of *Niſi Prius* for the Trying of an Iſſue at the Aſſizes, ſhall be ſealed after the End of one Month, next enſuing the End of the Term *Trin.* 16 *Car.* 2. This is ſince alter'd to three Weeks.

When a Record of *Niſi Prius* for the Trying an Iſſue at the Aſſizes muſt be ſealed.

B Iſſues joined in Chancery, King's Bench, Common Pleas, and Exchequer, which were formerly only triable at Bar, may now be tried by *Niſi Prius* in *Weſtminſter-Hall*, by the Chief Juſtice of each Court, and in their Abſence by two other of the Judges of each Court, and two of the Barons in the Exchequer: Where the Sheriff of *Middleſex* is to give his Attendance, and return *Tales de Circumſtantibus*, if there ſhall be Occaſion. 18 *Eliz. cap.* 12.

How Trials by *Niſi Prius* ſhall be in *Middleſex*.

18 Eliz. cap. 12.

C By a Rule made by the Court of Queen's Bench, in *Michaelmas* Term, 1705. it is ordered, That no Record of *Niſi Prius* ſhall be ſealed or paſſed at the *Niſi Prius* Office by the *Cuſtos Brevium* of this Court, or any Clerk of that Office, before the Iſſue in that Cauſe be fairly enter'd upon Record, or an *Incipitur* thereof; and ſuch Entry, with the Record of *Niſi Prius*, be firſt brought to and ſigned by the Secondary of this Court, for which no Fee ſhall be demanded or paid, but the uſual and accuſtomed Fee due to the Chief Clerk of this Court, for Entry of ſuch Iſſue on Record.

When Records of *Niſi Prius* ſhall be ſealed and paſſed.

The Whole, or an *Incipitur*, muſt be enter'd.

D That every Record of *Niſi Prius* in every Seſſion, for the City of *London* and County of *Middleſex*, to be tried within Term, ſhall be delivered into Court before the Judge to try ſuch Cauſe, within the firſt Hour after the Beginning of ſuch Sitting; otherwiſe upon Proclamation to be made thereof, a *Ne Recipiatur* may be enter'd by the Defendant's Attorney. *Trin.* 11 *W. B. R.*

When the Record of *Niſi Prius* muſt be delivered into Court in *London* and *Middleſex*.

E The Defendant pleads in Abatement, and there is a *Reſpondeas Ouſter*, and a Plea in Bar, and Iſſue joined thereupon; but in the Record of *Niſi Prius*, there is no mention made of the Plea in Abatement, and *Reſpondeas Ouſter*; and for that Reaſon the Trial was ſet aſide; becauſe the Record of *Niſi Prius* ought to have been a Tranſcript of the whole Iſſue Roll, and not of Part, as it was here. 10 *W. B. R.*

A Trial was ſet aſide, becauſe there was not in the Record the Plea in Abatement, and *Reſpondeas Ouſter* entered before the Iſſue.

F The Authority of a Judge of *Niſi Prius* is by Commiſſion of Aſſize. *Salk.* 454.

Judges Authority.

G A Judge at *Niſi Prius* may receive a Nonſuit at the Aſſizes. *Ibid.* 456.

Nonſuit.

Day of *Niſi Prius.*

The Record of *Niſi Prius* as to the Day in Bank, A is not amendable. *Carthew* 506.

Noctanter.

The Statute upon which the *Noctanter* Writ is founded.

Where any one having Right to approve waſte Ground, &c. makes and erects a Ditch or an Hedge, and it is thrown down in the Night-time, and it cannot be known by a Verdict of an Aſſize, or a Jury, by whom; and if the neighbouring Vills will not indict ſuch as are guilty, they ſhall be diſtrained to make again the Hedge or Ditch at their own Coſts, and to anſwer Damages. W. 2. cap. 46. 2 Inſt. 476, 477. B

W. 2. cap. 46.

The Nature of the Writ, and Proceedings upon it.

The Writ called the *Noctanter* Writ, iſſues out C of the Chancery, and is returnable in the King's Bench, on the Crown-Office Side, and is directed to the Sheriff of the County, commanding him by the Oath *Proborum & legalium hominum,* (*Note,* There muſt be above twelve.) *Com' prædict'* to enquire *qui malefactores & pacis Dom' Regis perturbatores apud, &c. ſepes & foſſata* [*Note,* If there be Pales or Rails, they muſt be particularly mentioned. 1 *Keb.* 545. *pl.* 46.] A. B. *ibidem per ipſum nuper levat' Noctanter,* (*Note,* If it be not *Noctanter,* this Writ will not lie. See 1 *Keb.* 545. *pl.* 46. to this Matter) *aut tali tempore quo facta eorum ſciri non credebant proſtraver' ad dampnum præd'* A. B. *& contra pacem Dom' Regis. Et ſi præd'* A. B. *fecerit Vic' ſecurum de clamore ſuo proſequendo tunc pon' per Vadios & ſalvos Plegios omnes illos quos culpabiles ibidem invenerit quod ſint coram Dom' Rege, &c. ad reſpondend' Dom' Regi de pace fracta quam* A. B. *de Tranſgreſſione præd.* The Sheriff returned upon this Writ an Inquiſition, where it was found upon Oath, *quod quidam malefactores & pacis Dom' Regis perturbatores* 20 *Die Maii, Anno, &c. Vi & Armis, &c. Sepes videl'* 20 *perticat' ſepium ipſius* A. B. *apud, &c. nuper ante per ipſum levat' Noctanter aut tali tempore quo facta eorum ſciri non credebant proſtraverunt, ſed qui aliquam partem inde proſtraver' Jur' præd' ignorant; Et ſimiliter dicunt quod Vi armata & cum Multitudine gentium, & nocturno tempore malefactores & pacis perturbatores prædict' fecerunt (ita quod nullus ad ipſos appropinquare ad ipſos cognoſ. auſus fuit) & redierunt.* See Cro. Car. 280, 439, 440.

The Return of the Writ, with the Inquiſition.

Then goes a *Diſtringas.*

The Return of the Damages found, and alſo of Iſſues.

A **Upon** this Return's being filed in the Crown-Office, there goes out a Writ of Inquiry, to inquire of the Damages: A *Diſtringas* to the Sheriff, to diſtrain *Propinquas Villatas & Fenſuras præd' circumadjacentes ſepes, &c. proſtrat' levare ad Cuſtos ſuos proprios*; and alſo to reſtore the Damages; which Writ recites the *Noctanter* Writ, Return, and Inquiſition: Thereupon the Sheriff returns five or ſix of the next Vills, and iſſues upon them one hundred Shillings each, and that *A. B.* ſuſtained 100 *l.* Damages; *Et quod propter brevitatem temporis* he could not levy them.

B **Note**, Here are ſome Obſevations fit to be taken Notice of in this new Practice:

C 1. **That** there ought to be a convenient Time (which the Court is Judge of) before this Writ is brought for the Country to inquire of and indict the Offenders. *Cro. Car.* 440. My Lord *Coke* in 2 *Inſt.* 476. is of Opinion, that it ſhould be a Year and a Day.

D 2. **The** better Opinion ſeems to be, That it lies for the Proſtration, as well of all Incloſures, as thoſe improved out of Commons. *Ibid.*

E 3. **That** if any one of the Offenders were indicted, the Defendant ſhould have pleaded it. *Ibid.*

F 4. **If** more Fences be found to be thrown down than really were, the Defendant may plead Not guilty to all, but ſo much as were thrown down.

G 5. **As** to the Pleading to it, where more Damages are found than there ought to be, the Defendant may by Proteſtation deny the Fact, or confeſs and aver that the Damages were but ſmall; and traverſe, That the Party *ſuſtinuit dampna* to the Sum found, or any other Sum beyond what he admits; or may plead Not-guilty, and may in their Defence ſhew any Matter which will be a Bar to the Proſecutor, but Satisfaction.

H 6. **If** the Vills repair, Damages ought not to be given to the Value of the Repairs; for that the Vills are ſtill liable to repair: And if the Vills have repaired, it ought ſo far to help them in the Trial of the *Quantum dampnificatus*, that the other Damages ought only to be conſidered.

I 7. **If** ſome of the Vills ſummoned are not circumadjacent, becauſe ſome of the other Vills not ſummoned lie between them, the circumadjacent Vills intended by the Statute, are the contiguous Vills round the Place; therefore if the Vills ſummoned are not contiguous, they are not guilty, and may plead ſo.

K 8. **Although** ſeveral Vills which lie circumadjacent have the ſame Defence, yet it will be beſt to plead ſeverally, and not jointly.

L 9. **Where** other circumadjacent Vills of as great or greater Value, either by Favour or Negligence of the Sheriff, are not ſummoned, they may plead as Tertenants do where all are not ſummoned.

A 10. If a Verdict be found for any one of the Vills, there ſhall go a new Writ, not taking Notice of the firſt, to diſtrain the Vills to be added with the other Vills; but the Inquiry of Damages will ſtand.

B 11. The Charges of the Defence for the ſeveral Vills, muſt be raiſed by Agreement; and if they cannot agree, each Vill muſt bear their own Charges, as in Caſe of a Suit againſt an Hundred 'till Execution, and then the Statute of 27 *Eliz.* hath provided a Remedy.

C 12. In Caſe ſome of the circumadjacent Vills are in another County, then by the Statute the neareſt of the Vills, and not the County, is regarded; and if this be pleaded, the Court muſt award another Writ to that County: But how the Damages aſſeſſed in one County, ſhall bind the Vills in another County, will be difficult; or how to join the Counties.

Nolle Proſequi.

See { Error.
Judgment.
Nonſuit.
Retraxit.

What this is.

D This is that the Plaintiff will proceed no farther in his Action, and may be as well before as after a Verdict; and is ſtronger againſt the Plaintiff than a Nonſuit; for a Nonſuit is a Default for Non-appearance; but this is a voluntary Acknowledgment that he hath no Cauſe of Action.

Though Plaintiff enters a *Nolle Proſequi* as to one of the Iſſues, yet he may proceed upon the reſt.

E A *Nolle Proſequi* is where there are divers Iſſues, or an Iſſue and Demurrer in one Cauſe joined between the Plaintiff and the Defendant, and the Plaintiff enters upon the Roll, a *Nolle Proſequi*; that is to ſay, That he will not proceed upon one or more of the Iſſues or Demurrer joined; yet he may, notwithſtanding ſuch Entries, proceed to Trial upon the reſt of the Iſſues: *Hill.* 23 *Car. B. R.* or to argue the Demurrer.

In

A **In** an Action brought againſt three, one of them pleads the General Iſſue, and the other two ſpecially; the Plaintiff demurs to the ſpecial Plea, and tries the General Iſſue, and recovers a Verdict, and hath his Judgment, and before any Judgment is had upon the Demurrer, he enters a *Nolle Proſequi* as to the Demurrer; and it was held, That if the *Nolle Proſequi* had been entered before the Judgment, it had diſcharged the whole Action; for it had been in the Nature of a Releaſe in Law, to the others; ſo alſo it had if Judgment had been againſt them all, and the Plaintiff had entered the *Nolle Proſequi* for the two; for Nonſuit or Releaſe, or other diſcharge of one, diſcharges all the reſt. *Hob.* 70.

Action againſt three; one pleads the General Iſſue, the others ſpecially. Plaintiff demurs to the Special Plea, but tries the General Iſſue, and has a Verdict and Judgment, but enters a *Nolle Proſequi* upon the Demurrer. If it had been entred before Judgment, it had diſcharged the whole Action.

B **A Retraxit** before Judgment, as to one Defendant releaſeth all the reſt; but after Judgment it ſhall only extend to him for whom it is entered. 1 *Roll. Rep.* 233.

Retraxit before Judgment as to one Defendant, releaſeth all the reſt: Otherwiſe after Judgment.

C **See** *Nolle Proſequi* as to one Defendant in *Trover.* 3 *Keb.* 136.

Nolle Proſequi as to one Defendant in Trover.

Nolle Proſequi as to *Retraxit* by Attorney. *Ibid.* 332.

Nolle Proſequi as to *Retraxit* by Attorney.

D **The** Plaintiff comes by his Attorney, *hic in Curia & fatetur ſe ulterius Nolle Proſequi:* Whereupon Judgment was given, That the Defendant *eat ſine Die,* and no Amercement upon the Plaintiff; and upon Error brought, held erroneous. 8 *Rep.* 58. *a.*

Nolle Proſequi in Debt.

E 1. **A Retraxit** cannot be, unleſs the Plaintiff or Demandant be in Court in Perſon, and ſo the Entry is. 8 *Rep.* 58. *a.*

Retraxit muſt be in Perſon.

F 2. **A Retraxit** is always of the Part of the Plaintiff or Demandant; and a Departure in deſpight of the Court, on the Part of the Defendant or Tenant: And in the one Caſe, the Plaintiff or Demandant is barred; and in the other, the Defendant or Tenant: For the Plaintiff or Demandant ſhall have Judgment preſently. 8 *Rep.* 59. *a.*

It is a Bar to the Plaintiff.

Departure in deſpight of the Court to the Defendant.

G **Alſo** the Plaintiff ought to be amerced, for this is ſtronger than a Nonſuit; for that is only for a Default for Non-appearance; but this is a voluntary Acknowledgment that he hath no Cauſe of Action. *Ibid.*

Where the Plaintiff ought to be amerced.

H **In** Caſes of Proceſs and Delay, which was for the Advantage of the Party, he ſhall not aſſign this for Error: But where a Judgment is imperfect for want of a *Miſericordia,* or a *Capiatur,* it is an Error not amendable. 8 *Rep.* 59. *a.*

What Errors may be aſſigned in Favour of the Plaintiff, and what not.

I **An** Action was brought upon ſeveral Promiſes; the Defendant pleads an ill Plea: The Plaintiff demurs, and before Judgment enters a

Nolle Proſequi to one of the Counts. *Note*, No Notice was taken that this *Nolle Proſequi* was entered upon one of the Counts before Judgment. 2 *Lev*. 34. *Vide Walſh* and *Biſhop*. 1 *Cro. Car*. 243.

The King's *Nolle Proſequi* ſhall not ſtop the Informer.

The King's Entry of a *Nolle Proſequi*, ſhall not ſtop the Proceedings of the Informer; neither ſhall the Nonſuit of the Informer be a Bar to the King. 1 *Leon*. 119. Caſe 161. A

Treſpaſs againſt two who plead ſeverally, are ſeverally found guilty, and ſeveral Damages.

Treſpaſs againſt two, one pleads Not-guilty, the other juſtifies, and both Iſſues found for the Plaintiff, and ſeveral Damages and joint Coſts aſſeſſed; then the Plaintiff enters a *Nolle Proſequi* againſt one, and takes Judgment againſt the other for Damages found againſt him, and the Coſts; and inſiſted upon for Error, That the Entry of a *Nolle Proſequi* before Judgment is a Releaſe to him, and *quaſi* a Releaſe to both. *Curia contra*, It is not an abſolute Releaſe, but *quaſi* an Agreement that he will not proceed againſt the one; and as to him it is a Bar, but he may proceed againſt the other. So where they ſever by Pleas, there may be Proceedings againſt one, and a *Nolle Proſequi* againſt the other. *Cro. Car*. 239. and 243. *pl*. 4. *Cro. Eliz*. 762. *pl*. 25. ſeems *contra*. See Title **Judgment**. B

The *Nolle Proſequi* before Judgment is only a Diſcharge for him for whom it is entered.

So where they ſever in Pleading.

Battery and Falſe Impriſonment.

Not guilty to the Battery, juſtifies to the Impriſonment, and Judgment that it was not good.

Nolle Proſequi to the Not-guilty not entred.

Quod eat inde ſine die, How it is where there are two Defendants, and one pleads *Non. cul.* and the other ſpecially againſt whom there is a Judgment, and a *Nolle Proſequi* for the other; and where the Action is only againſt one Perſon who pleads ſeveral Pleas.

In Treſpaſs and falſe Impriſonment, the Defendant as to the Battery pleads Not-guilty, and juſtifies as to the Impriſonment; and upon a Demurrer the Plea was adjudged ill; whereupon the Plaintiff took his Judgment, and entered a *Nolle Proſequi* for the Reſidue: And becauſe it was not entered, *Quod eat ſine die*, ſo as there was not any Diſcharge for the Defendant, it was alledged to be Error: But held, That where there are two Defendants, and one pleads *Non cul.* and the other another Plea; where, upon a Demurrer, there is a Judgment for the Plaintiff upon the Demurrer, and a *Nolle Proſequi* for the other, there it ought to be *ſine die*, or elſe it is ill: But where it is againſt one, the Precedents are both Ways. *Cro. Jac*. 439. *pl*. 11. See *Hob*. 180. C

Before Judgment.

Of a *Nolle Proſequi* before Judgment. See *Carthew* 19. D

Diſcharge.

Where it is no Diſcharge, 3 *Salk*. 245. When and where it may be entered as to one, and the Proceedings go on as to the other *Ibid*. 247. E

More Caſes touching a *Nolle Proſequi*. See *Salk*. 456. *Comb*. 8, 18, 23, 39, 316.

Nomine Pene.

See { **Demand.**
Rent.

A A Nomine Pœnæ **is a Penalty incurr'd for not paying of the Rent at the Day appointed by the Leaſe or Agreement for the Payment thereof.**

Nomine Pœnæ, what.

In an Avowry for Rent, the Defendant avowed for five Pounds Rent ſuch a Day, and twenty Pounds for a *Nomine Pœnæ*, in not paying of it; but laid no actual Demand of the Rent, but concluded his Avowry for the Diſtreſs of the twenty five Pounds. The Court here held, That the Avowry was inſufficient for the twenty Pounds *Nomine Pœnæ*, for want of a Demand; but held the Diſtreſs good for the five Pounds, and he had a *Retorn. Averiorum* adjudg'd to him thereupon. *Hob.* 133. See alſo 2 *Lutw.* 1157, 1161.

In Avowry for Rent there muſt be a Demand laid to juſtify a Diſtreſs for a *Nomine Pœnæ*.

B **Where** Rent is reſerved, and there is a *Nomine Pœnæ* for the Non-payment of it; there if the Rent be behind, and unpaid, there muſt be an actual Demand thereof made, before the Grantee of the Rent can diſtrain for it: 21 *Car. B. R.* For the *Nomine Pœnæ* is of the ſame Nature as the Rent is, and is iſſuing out of the Land out of which the Rent doth iſſue, and ſavours of the Realty. *Hob.* 82, 133.

There muſt be a Demand, before there can be a Diſtreſs for a *Nomine Pœnæ*.

C **Where** there is a *Nomine* of twenty-eight Shillings for every Day, the Queſtion was, Whether there muſt be a Demand for every Day's *Nomine Pœnæ*, or one Demand would ſerve for twenty Days or more? Which they did not determine. *Cro. Jac.* 617. *pl.* 7.

Whether a *Nomine Pœnæ* for every Day's Default muſt be daily demanded: Or one Demand will ſerve for twenty Days.

D **An** Aſſignee is chargeable with a *Nomine Pœnæ* incurred after the Aſſignment, not before: Alſo Debt lies for it without Demand of the Rent; but a Re-entry for a Condition cannot be without a Demand. *Moore*, Caſe 486.

Debt lies againſt an Aſſignee for *Nomine Pœnæ*, without Demand: But not ſo upon a Condition of Re-entry.

What is a *Nomine Pœnæ*, and what not.

Where a Sum is to ariſe upon Non-payment of a Collateral Sum, though mentioned to be *Nomine Pœnæ*, and not of a Rent, it is not a *Nomine Pœnæ*, but a Forfeiture or Penalty for Non-payment at the Time. *Lutw.* 1156. A

Nonage, See { **Age.**
Infancy.
Inſpection.

Non-claim, See **Fines for Land.**

Non Compos Mentis.

See { **Aſsignment.** **Deviſe.** **Diſability.** } { **Lunatick.** **Privy.** **Will.**

Four Manners of *Non compos Mentis*, and what they are.

THERE are four Manners of *Non compos Mentis*. B

1*st*, **Ideot**, or Fool Natural. 4 *Rep.* 126. *a.* C

2*dly*, **One** who was of ſane Memory, but loſt it by the Viſitation of God.

3*dly*, *Lunaticus*, who is ſometimes of ſane Memory, and ſometimes not.

4*thly*, **A** Drunkard.

Difference between an Ideot, and one of Non-ſane Memory.

And there is a Difference between an Ideot *a Nativitate*, and one of Non-ſane Memory *ex Viſitatione Dei*: For an Ideot is known by his perpetual Infirmity of Nature from his Birth, for he never had any Senſe to contract with any Man: But he who was of good Memory and Underſtanding, and able to make a Contract, and afterwards becomes by Caſualty *Non compos*, he is not known to the World as well as a Natural Ideot is. 4 *Rep.* 124. *b.* D

A **If** an Ideot of full Age makes a Feoffment, then upon an Office found of his Ideocy, and that he had aliened his Lands; upon a *Sci. fa.* againſt the Alienee iſſuing out of the Petty-Bag Office, and this Matter found, the Lands ſhall be ſeized into the King's Hand, and the Inheritance ſhall be reveſted in the Ideot. 4 *Rep.* 126. *b.*

An Ideot makes a Feoffment, how to be avoided. Office found. *Sci. fa.*

B **Every** Deed of Feoffment or Grant that any Perſon of Non-ſane Memory made, is avoidable, and yet ſhall not be avoided by himſelf.

By whom a Feoffment, *&c.* by one of Non-ſane Memory, ſhall be avoided.

There are four Manners of Privities.

C 1*ſt*, **Privities** in Blood, as Heir; and he may ſhew the Diſability of his Anceſtor, and avoid his Grants, *&c.*

The four ſeveral Manners of Privities.

D 2*dly*, **Privities** in Repreſentation, as Executors and Adminiſtrators; and they may ſhew the Infirmity of their Teſtator or Inteſtate: But Privity in Eſtate, or Privity in Tenure, as Lord by Eſcheat, *&c.* cannot.

In Repreſentation.

In Eſtate.

In Tenure.

E **But** if one *Non compos* levies a Fine, or ſuffers a Recovery, or acknowledges a Statute or Recognizance, neither his Heir or Executor can avoid them: Becauſe theſe are Matters of Record, and ſhall not be avoided by a nude Averment of *Non ſanæ Memoriæ.* 4 *Rep.* 124. *a.* 125. *a.*

What Acts ſhall not be avoided.

F **Sane Memory** for the making of a Will, is not always where the Party can ſpeak, Yea or No; or hath Life in him; nor when he can in ſome Things anſwer with Senſe; but he ought to have Judgment to diſcern, and to be of perfect Memory, otherwiſe the Will is void. *Moore*, Caſe 1051.

What is ſane Memory for the making of a Will.

G **A Man** *Non compos* ſhall not loſe his Life for Felony or Murder, but for Treaſon he ſhall. 3 *Rep.* 124.

Not ſuffer for Felony, but ſhall for Treaſon.

H **If** an Ideot be ſued, he ſhall appear in Perſon; and he who pleads beſt for him ſhall be admitted: But one *Non compos Mentis* muſt appear by Guardian, if under Age; and by Attorney, if of full Age: But yet as to Eſtates or Gifts made by them, they cannot by any Plea avoid them.

An Ideot muſt appear in Perſon.

One *Non compos* muſt, if under Age, by Guardian; if of Age, by Attorney.

I **Although** a drunken Man is *Non compos Mentis*, yet his Drunkenneſs ſhall not extenuate, but aggravate his Offence, as well touching his Life, as his Lands or Goods. 4 *Rep.* 125. *a.*

Drunkenneſs ſhall not extenuate, but aggravate the Offence.

K **How**, and in what Caſes Laches ſhall prejudice an Ideot or *Non compos*, as to bar their Right of Entry. 4 *Rep.* 125. *a.* 126.

Where Laches ſhall bar their Right of Entry.

L **It** is no good Plea for a Man to ſay, That he was of Non-ſane Memory at the Time of making of the Bond. *Cro. Eliz.* 398. *pl.* 4.

Non-ſane Memory is no Plea to a Bond.

The Law gives the King the Cuſtody of the Body, Goods and Lands, of the Ideot.

A **The** Law gives the King but the Cuſtody of the Body, Goods and Lands of the Ideot; but the Freehold remains in the Ideot. 4 *Rep.* 126.

Who ſhall have the Cuſtody of their Copyhold Lands.

B **The** King ſhall not have the Cuſtody of the Ideot's Copyhold Lands; yet the Alienation, after the Office found, ſhall be avoided. 4 *Rep.* 126. *b.*

The King may take the Profits of the Lands, and all the Goods of one *Non compos* for his Maintenance only.

C **Where** a Man of ſane Memory becomes *Non compos*, and afterwards aliens his Lands, Goods or Chattels, and he is afterwards found *Non compos*, and that he had aliened, *&c.* the King may protect him who could not protect himſelf, and take the Profits of his Lands, and all that he hath, wherewith to maintain him and his Family: But the King ſhall not take any of the Profits to his own Uſe. 4 *Rep.* 127.

He that hath the Cuſtody of one *Non compos*, is accomptable as Bailiff.

He cannot cut Trees but for neceſſary Repairs.

D **He** that hath the Cuſtody of a Man of Non-ſane Memory, is to have Nothing to his own Uſe; but is accomptable as Bailiff to the *Non compos*, his Executors or Adminiſtrators: Alſo he cannot cut down Trees, but for neceſſary Houſe-boot, Plow-boot, Cart-boot, and to repair antient Pales. 4 *Rep.* 127. *b.*

What muſt be done upon an Inquiſition of Lunacy.

E **If** a Man be found *Non compos* upon an Inquiſition of Lunacy, the Inquiſition muſt find what Lands and Goods he had at the Time of his becoming *Non compos*, and what is become of them; and this muſt be returned into the Petty-Bag Office in Chancery, in order to have Proceſs ſued out againſt the Parties who have thoſe Lands or Goods.

Proof.

F **What** Proof ſhall or ſhall not be allowed to make a Man *Non compos*. *Mod. Caſes in Law and Equity* 59.

Non Dampnificatus.

See { **Condition.**
Pleas.

Non Dampnificatus, what.

G **This is a Plea to be pleaded to an Action of Debt upon a Bond, with a Condition to ſave the Plaintiff harmleſs.**

A **Where** the Condition of a Bond is to diſcharge the Plaintiff, *&c.* then the Manner of the Diſcharge ought to be ſhewn: But if it be to ſave harmleſs only, then *Non dampnificatus* generally is good enough: *Bret* and *Awder*, 1 *Leon.* 72. Or to free and keep harmleſs from all Coſts of Law-Suits. 5 *Mod.* 243.

Where the Diſcharge muſt be pleaded, and where *Non dampnificatus* generally.

B **The** Defendant pleads, That *libere & abſolute*, he acquitted him of the Bail; this is no Plea: For when one pleads a Diſcharge, and that he ſaved him harmleſs, he ought to ſhew it, that the Court may adjudge of it. But he may plead *Non dampnificatus*, without ſhewing of it. *Cro. Jac.* 363.

How to plead a Diſcharge of the Bail.

And where *Non dampnificatus.*

C **Debt** upon Bond, conditioned to ſave harmleſs, and diſcharge the Plaintiff from ſuch a Suit: Upon *Oyer* of the Bond, the Defendant pleads, That he had ſaved harmleſs, and diſcharged the Plaintiff, but did not ſay how: This is ill. But if he had ſaid in the Negative, That the Plaintiff was not dampnified, this had been a good Plea. *Vide* Bret *and* Awder, 1 *Leon.* and 2 *Rep.* 3, 4. *Manſer's* Caſe, and *March*, 121. *pl.* 200.

Where it is a good Plea.

D **The** Condition of a Bond was to free and ſave harmleſs. The Defendant pleads, *Non dampnificatus.* The Plaintiff demurs; becauſe, where the Condition is to diſcharge and acquit, the Defendant ought to plead in what Manner he hath acquitted. *Curia.* Where a Condition is to ſave harmleſs from all Suits in general, there the Defendant muſt plead *Non dampnificatus:* But where it is in a particular Suit or Thing, there he muſt ſhew how he hath ſaved harmleſs, and diſcharged: But where a Suit is upon a Counter-bond *Non dampnificatus* is a good Plea. 8 *W. B. R.*

Where the Condition is to acquit and diſcharge, he muſt ſhew how acquitted.

E **Where** the Defendant is bound to ſave the Obligee harmleſs from another, there he may plead *Non dampnificatus:* But where he is bound *ad Exonerandum* the Obligee; there, in Debt upon the Bond, the Defendant ought to ſhew how he diſcharged him. *Keilw.* 80. *b.*

Where *Non dampnificatus* may be pleaded, and where not.

F **See** other Caſes concerning pleading *Non dampnificatus.* *Cro. Eliz.* 156.

Cro. El. 253. *Acton* v. *Hill.*
367. *Botwright* v. *Harvey.*
393. *Hutchinſon* v. *Lewſon.*
642. *Butten* v. *Downham.*
916. *Bray* v. *Bacon.*
Cro. Ja. 165. *Alington* v. *Yearknen.*
339. ———

2 *Bul.* 115. ———
270. *Codner* v. *Dalber.*
1 *Leon.* 72. ———
Owen 71. ———
1 *Rol. Abr.* 432. *pl.* 2.
Stile 16. *Wroth* v. *Elſey.*
Lut. 669. *Briggs* v. *Mend.*

Non eſt Factum.

See { **Deed.**
Delivery.

Non eſt Factum, what.

NON eſt Factum **is a Plea to an Action brought upon a Bond, or any other Deed.** A

How to plead where the Deed is void, and where voidable.

In every Caſe where a Bond is void, the Defendant may conclude, that is not his Deed: But where a Bond is voidable, he muſt ſhew the ſpecial Matter, and conclude, Judgment *ſi action'*. 1 *H*. 7. 15. *b*. and 17. *a*. B

How to plead *Non eſt Factum*.

Debt upon Bond; the Defendant pleads, That *Scriptum obligatorium prædict' non eſt Factum ſuum*; this is naught: Becauſe in this Plea he ſaid, That it is *Scriptum obligatorium*; whereas he ſhould have only ſaid, *Scriptum prædict' non eſt Factum ſuum*, without the Word *obligatorium*. C

Where the Defendant ſays, *Factum prædict'* in his Plea, he owns it to be his Deed.

The Defendant pleads, *Quod factum prædict* was made and delivered without a Date, and the Plaintiff put a Date to it, and ſo *Non eſt Factum*; and upon a Demurrer held to be naught: Becauſe the Defendant confeſſes the Deed by ſaying, *Factum prædict'*, and afterwards denies it; but he might have ſaid generally, *Non eſt Factum*. *Cro. Eliz.* 800. *pl.* 51. D

Where a Man is bound in a Bond by a wrong Name.

A. B. was bound in a Bond to one *C.* by the Name of *J. S.* and an Action was brought thereupon againſt him, by the Name of *A. B.* He pleaded *Non eſt Factum*; and the ſpecial Matter was found and adjudg'd for the Defendant: Becauſe the Plaintiff ought to have ſued the Defendant by the Name by which he was bound, and to have declared upon the ſpecial Matter. 1 *Leon*. 453. E

A **A Bond** is dated *Novem.* 10. and ſo declared upon. The Defendant pleads *Non eſt Factum*; and found that it was not delivered till the 18th: For the Iſſue being upon *Non eſt Factum*, it appears to be his Deed; but the Defendant might have helped himſelf by Pleading. *Cro. Jac.* 126. *pl.* 12.

Where a Bond is dated *November* 10. and delivered *November* 18. yet good.

B **Upon** *Non eſt Factum* the Jury found, That the Defendant, and *J. S.* ſealed and delivered the Bond, and were bound jointly, and that *J. S.* is alive; but Judgment for the Plaintiff. *Cro. Jac.* 152. *pl.* 15.

That the Defendant and *J. S.* who is yet alive, ſealed the Bond: It is found *pro quer'*.

C **Where** a Deed is razed, whereby it becomes void, the Obligor may plead *Non eſt Factum*, and give the Matter in Evidence; becauſe it was not his Deed at the Time of the Plea. 11 *Rep.* 27. *a. Moore*, Caſe 98. *Con.*

Where a Deed is made void by Razure, *Non eſt Factum* is a good Plea.

D **Where** a Deed is altered in a Point material by the Plaintiff, or a Stranger without his Privity, be it by Interlineation, Addition, Razure, or drawing of a Pen through any material Word, the Deed is void: But if the Addition be made by a Stranger, without the Plaintiff's Privity, in any Point, not appearing to the Court to be material; this ſhall not avoid the Deed. 11 *Rep.* 27. *a. Moore*, Caſe 1125.

What Alteration of a Deed, and by whom, will make it void, and what not.

E **Where** a Deed contains ſeveral Matters or Covenants, if any of them be altered, this avoids the whole Deed; for tho' they are ſeveral Covenants, yet they are but one Deed. 11 *Rep.* 28. *b.*

If one Covenant in a Deed is altered, it avoids the whole Deed.

F **None** but the Party, his Heirs, Executors, or Adminiſtrators, can plead *Non eſt Factum*. *Lutw.* 662.

Who may plead *Non eſt Factum*.

G **Two** are bound in a Bond, and the Seal of one of them is broken off; this makes void the whole Deed againſt both. 11 *Rep.* 18.

Two bound in a Bond, the Seal of one is torn off, this makes void the Bond.

H **In** Debt upon Bond the Defendant pleaded *Non eſt Factum*, and afterwards, *Relicta verificatione*, confeſs'd the Action; the Judgment ſhall be *Def. in miſericordia*, and not *Capiatur*: For the Iſſue not being tried, but the Action confeſs'd, it ſhall be only *in Miſericordia*. *Cro. Jac.* 420. *pl.* 11. and 64. *pl.* 2.

Where Judgment is by Confeſſion after *Non eſt Factum*, it muſt be *in Miſericordia*.

Non Obſtante.

See **King's Grants.**

Non Obſtante, what.

A Non Obſtante **is a Licence to do a Thing, which at the Common Law might be done without it; but now (being reſtrained by ſome Acts of Parliament) it cannot be done without it.** Vaugh. 345, 346. A

Where the King's Grant with a *Non Obſtante* is good, and where not.

B **When** the King, by the Common Law, cannot make a Grant, there a *Non Obſtante* of the Common Law will not, againſt the Reaſon of the Common Law, make the Grant good: But when the King may lawfully grant by the Common Law, but the Common Law requires, that he be inſtructed that he be not deceived; there a *Non Obſtante* ſupplying of it, ſtands with the Reaſon of the Common Law. 4 *Rep.* 35. *b.*

Cannot make a void Grant good.

C **When** the Words of the Grant are not ſufficient, *ex vi Termini*, to paſs the Thing granted, but the Grant is void; there a *Non Obſtante* cannot make the Grant good: As where the King grants *Portion' Decimarum in* L. *nuper in tenura* J. C. and *J. C.* was never in Poſſeſſion of them; this is void, and cannot be made good by a *Non Obſtante*: But where Land is granted, which is in Leaſe for Life or Years, there, by the Grant of the Lands, the Words are ſufficient to make the Reverſion paſs. But the Law requires, That the King be not deceived in his Grant; and this is ſupplied by a *Non Obſtante*. 4 *Rep*. 35. *b*. 36. *a*.

The King muſt not be deceived in his Grant.

When the King is deceived, a *Non Obſtante* will not help falſe Suggeſtions.

D **When** the King is deceived in his Grant, a *Non Obſtante* ſhall not help falſe Informations, and falſe Suggeſtions. *Cro. Car.* 198.

An Act for Confirmation of Letters Patents, made and to be made by Queen *Elizabeth*, for ſeven Years. 18 **Eliz. cap.** 2.

E **A Confirmation** of the Grants by the Queen, in all her Letters Patents, made ſince the Beginning of her Reign, or to be made for ſeven Years after, of any Honours, Caſtles, Manors, Lands, Tenements, Hereditaments, *&c.* and that they ſhall ſtand, and be good and effectual in Law againſt her Majeſty, her Heirs and Succeſſors; and be conſtrued moſt beneficially againſt the Queen, her Heirs and Succeſſors, *Non Obſtante*.

See the ſeveral Defects which are remedied.

A Any Miſnaming, Miſrecital and Non-recital of any Honours, Caſtles, *&c.* or any Parcel thereof.

B Or any lack of finding of Offices or Inquiſitions of the Premiſſes, or any Part thereof.

C Or any Miſrecital or Non-recital of Leaſes thereof before made.

D Or any lack of Certainty, miſcaſting, rating or ſetting forth of the yearly Value or Rents reſerved, of or for the ſame, or any Part thereof.

E Or that the Premiſſes, or any Part thereof, is valued at more or leſs in the Patent than the yearly Value is.

F Or the miſnaming or not naming of the Towns, Hamlets, Pariſhes and Counties.

G Or lack of the true naming of the Lands, or the Kinds and Qualities thereof.

H Or lack of true naming the Corporation.

I Or lack of Attornment, Livery of Seiſin, or miſnaming the Tenants or Farmers of the Premiſſes.

Non Omittas.

Non Omittas, what.

K A Non Omittas **is a Writ directed to the Sheriff to enter into a Liberty, where he hath made his Warrant to a Bailiff of a Liberty to execute a Proceſs, and he hath made no Return to him of what he hath done. For Liberties muſt not be privileged to hinder or delay the general Execution of Juſtice; and if they, or their Miniſters, do neglect their Duties herein, this Court, as the ſupream Court, may intermeddle, notwithſtanding their Privileges, to put the Proceſs of this Court in Execution, that the Law may receive no Obſtruction by them.** 21 Car. 1. B. R.

In what Writs there is a *Non Omittas.*

L **A Writ** of *Capias Utlagatum*, Writs of *Quo Minus* out of the Exchequer, and all Writs whatſoever at the King's Suit, are of the ſame Effect as a *Non Omittas*; and the Sheriff may, by Virtue of them, enter into a Liberty and execute them.

The Clauſe of the *Non Omittas.*

M **The** Clauſe of the *Non Omittas* is, *Quod non omittas propter aliquam Libertatem* (*viz.* of the Liberty to which the Sheriff hath made a *Mandavi Ballivo qui nullam dedit Reſponſum*) *quin in eam ingrediaris & capias* A. B. *ſi, &c.*

Non Ponend. in Aſſiſ, ſee Juror and Juries.

Non-Reſidence.

What is Non-Reſidence.
21 H. 8. cap. 13.
Note, This Act was made at a Parliament began at *London*, and adjourned to *Weſtminſter*.

BY an Act made 21 *H.* 8. *cap.* 13. *ſect.* 26. it A is enacted, That every ſpiritual Perſon who ſhall be promoted to any Archdeaconry, Deanery, or Dignity, in any Cathedral or Collegiate Church, or being beneficed with any Parſonage or Vicarage, ſhall be perſonally reſident at or upon his Dignity, Prebend, or Benefice, or one of them at the leaſt; and in Caſe he abſent himſelf wilfully for one Month together, or by the Space of two Months, to be accounted at ſeveral Times in any one Year, and reſides in other Places by ſuch Time, ſhall forfeit for every Default 10*l.* Sterling; one Moiety to the King, the other to the Informer. *Sect.* 26.

Who may be diſcharged of Non-Reſidence, and who not.

What ſpiritual Perſons may be diſcharged of B Non-Reſidence, and what not. *Sect.* 28.

The King may licence his own Chaplains.

The King may licence his own Chaplains for C Non-Reſidence upon their Benefices. *Sect.* 29.

What ſpiritual Perſons, and for what Cauſe may be non-reſident.
28 H. 8. cap. 13.

See another Act made 28 *H.* 8. *cap.* 13. what D ſpiritual Perſons may be diſcharged from Reſidence upon their Benefices, and for what Cauſe. *Sect.* 2, 3, 5.

Nonſuit.

See {**Coſts.**
Damages.
Declaration.} {**Nolle Proſequi.**
Summons and Severance.}

Nonſuit, what.

NOnſuit is when a Man brings a perſonal E Action, and doth not proſecute it with Effect, or elſe upon the Trial refuſes to ſtand a Verdict; then he becomes nonſuited, which is recorded by the Court, and the Defendant recovers his Coſts againſt him.

A **There** is a Difference between a Nonſuit and a *Retraxit*; a Nonſuit is always upon a Demand made for the Plaintiff to appear, and he makes Default; a *Retraxit* is when the Plaintiff is preſent in Court. A *Retraxit* is a Bar of all other Actions of the like Nature, but a Nonſuit is not, unleſs in ſome particular Caſes; for it may be the Plaintiff hath miſtaken ſomething in his Declaration, or that his Witneſſes who ſhould prove his Action are not preſent.

Difference between a Nonſuit and a *Retraxit*.

B **A Nonſuit** in an Appeal of Murder, Rape, Robbery, *&c.* after Appearance is peremptory, and this is *in favorem Vitæ*. *Co. Litt.* 138, 139.

In Appeal of Murder, *&c.* Nonſuit after Appearance is peremptory.

C **In** real or mixt Actions, the Nonſuit of one of the Demandants, is not the Nonſuit of both; for he which makes Default ſhall be ſummoned and ſevered: But regularly in perſonal Actions, the Nonſuit of one Plaintiff is the Nonſuit of both, unleſs in ſome Particulars. *Ibid.*

In Actions real or mixt, Nonſuit of one Demandant is not the Nonſuit of both.

D **Upon** a Trial when the Jury comes to deliver in their Verdict, and the Plaintiff is called to hear the Verdict; if he do not appear after he is thrice called by the Cryer of the Court, he is to be nonſuited, and the Nonſuit is to be recorded by the Secondary, by the Direction of the Court, at the Prayer of the Defendant's Counſel: *Hill.* 21 *Car. B. R.* For the Court will not order it to be recorded, except the Counſel pray it for the Client.

Method of nonſuiting the Plaintiff on a Trial.

E **The** Court cannot compel the Plaintiff to appear and ſtand a Verdict; but if the Plaintiff appears, or his Counſel, or Attorney appears for him, he cannot be afterwards nonſuit, but the Jury muſt deliver in their Verdict.

The Court cannot compel the Plaintiff to ſtand a Verdict.

F **The** King cannot be nonſuited, becauſe in Judgment of Law he is always preſent in Court; but his Attorney General may enter a *Nolle Proſequi*.

Why the King cannot be nonſuited.

G **See** where the Plaintiff may enter a *Nolle Proſequi* for one Part of his Action, and proceed for the other Part. 1 *Saund.* 207.

Where the Plaintiff may enter a *Nolle Proſequi* for Part, and proceed for other Part.

H **After** a Demurrer joined, if the Court gives a Day over, the Plaintiff may be nonſuit; for the Plaintiff is then demandable. *Co. Lit.* 140. *a.*

When Plaintiff may be nonſuit after Demurrer joined.

I **After** a Judgment *quod competet*, the Plaintiff may be nonſuited, becauſe it is but an interlocutory Judgment; but after any other Verdict whereupon a final Judgment is to be given, he cannot.

When after Judgment, *quod computet*.

K **When** a Plaintiff is Nonſuit, if he will again proceed in the ſame Cauſe, he muſt put in a new Declaration, and cannot proceed upon that Declaration, whereupon he did proceed in the Cauſe, and wherein he became nonſuit: 22 *Car. B. R.* 16 *Apr.* 1650. *B. S.* For by his being nonſuit it ſhall be intended that

What the Plaintiff muſt do to proceed in the ſame Cauſe after he is nonſuit.

he had no ſuch Cauſe of Suit as he declared in; and ſo that Declaration is void, and he hath no Day in Court.

King of *Spain* has been nonſuit in *England.*

A **The** King of *Spain* hath been nonſuit in *England: Mich.* 22 *Car. B. R.* And this ſtands with Reaſon; for if a foreign Prince will take the Benefit of the national Laws here, he muſt proceed and ſtand to the Rules and Orders of the Court wherein he prefers his Action.

If the Plaintiff will not proceed as he ought, Defendant may nonſuit him.

B **If** the Plaintiff will not proceed upon his Declaration, as he ought to do by the Rules of the Court, the Defendant may nonſuit him. *Mich.* 1649. *B. S. Quære.*

Though Plaintiff do not appear when called, to hear the Verdict, yet if he appear before the Nonſuit be recorded, the Court may take the Verdict.

C **Although** upon a Trial the Plaintiff be called to hear the Verdict, and do not appear to hear the Verdict when he is called, and thereupon the Court direct the Secondary to record the Nonſuit; yet if afterwards the Plaintiff do appear before the Nonſuit be actually recorded, the Court may proceed to take the Verdict; *Trin.* 1651. *B. S.* For it is not a Nonſuit until it be recorded by the Secondary, and then it is made Part of the Record, and is in the Nature of a Judgment againſt the Plaintiff.

If Plaintiff be not ready at the Trial when the Jury is ſworn, the Court may nonſuit him.

D **If** the Plaintiff be not ready at the Trial when the Jury is called and ſworn, the Court may call him nonſuit. By *Rolle* Chief Juſtice. 1651. *B. S.* For it ſhall be intended he will not proceed in his Cauſe any farther; yet ſometimes the Court hath ſtaid a while in Expectation of his coming, and making good his Action.

The Statute that gives the Defendant Coſts, where the Plaintiff or Demandant can have them.

4 **Jac.** 1. **cap.** 3.

E **See** an Act 4 *Jac.* 1. *cap.* 3. entituled, *An Act to give Coſts to the Defendant upon a Nonſuit of the Plaintiff, or Verdict againſt him,* wherein there is a general Clauſe, That in all Caſes where the Plaintiff or Demandant may have their Coſts, in caſe Judgment be given for them: So alſo may the Defendant againſt the Plaintiff or Demandant, in caſe he is nonſuited, or a Verdict found againſt him.

Where the Tenant or Defendant ſhall pay Coſts, and where not, according to the Judge's Certificate.

4 & 5 **Annæ.** *For Amendment of the Law.*

F **That** the Defendant or Tenant in any Action, or for any Plaintiff in Replevin, with Leave of the Court to plead as many Pleas as he ſhall think fit: And if ſuch Matter ſhall, upon a Demurrer, be judged inſufficient, Coſts ſhall be given. Or if a Verdict be found upon any Iſſue, for the Plaintiff or Demandant, Coſts ſhall be given, unleſs the Judge who tried the Iſſue ſhall certify, That the Defendant, Tenant, or Plaintiff in Replevin, had a probable Cauſe to plead ſuch Matter.

A **By** the Statute of 13 *Car.* 2. *cap.* 2. *Seſſ.* 2. *Sect.* 3. it is enacted, That upon an Appearance to be entred with the reſpective Officer at the Return of the Writ, Bill, or Proceſs; if the Plaintiff doth not deliver a Declaration againſt the Defendant, in ſome Perſonal Action or Ejectment for Lands, before the End of the next Term following, then a Nonſuit ſhall be entered againſt ſuch Plaintiff, and the Defendant ſhall recover his Coſts.

Nonſuit for not declaring in two Terms.

13 Car. 2. cap. 2. Seſſ. 2. Sect. 3.

B **Where** a Perſonal Action is againſt two Defendants, if they plead ſeverally, and the Plaintiff becomes nonſuit as to one, before he hath Judgment againſt the other, he ſhall be barred againſt both: But where there is but one Defendant pleads to Iſſue as to Part, and demurs to the other Part, the Plaintiff may be nonſuit as to one, and proceed for the other. *Hob.* 180.

An Action againſt two, who plead ſeverally, the Plaintiff is nonſuit as to one, before Judgment againſt the other, how to be.

C **The** Difference between a Nonſuit and Retraxit. 3 *Salk.* 344.

Nonſuit and Retraxit.

D **In** Treſpaſs againſt four, there can be but one Nonſuit for want of declaring. *Ibid.* 455.

Treſpaſs.

E **A** *Non Proſs* may be entered as to one Defendant after an interlocutory Judgment; but not after final. *Ibid.*

When to be enter'd.

F **Where** a Defendant files Bail without an Arreſt, the Plaintiff may be *Non Proſs'd. Ibid.*

Bail.

G **In** a *Quare Impedit* a Nonſuit after Appearance is peremptory. *Salk.* 559.

Quare Impedit.

H **So** it ſeems in an Appeal, but Nonſuit therein before Appearance is not peremptory. *Ibid.* 64.

Appeal.

I **In** Ejectment againſt ſeveral, if ſome confeſs Leaſe, *&c.* and others not, the Plaintiff may proceed as to the former, and be nonſuit as to the latter. *Ibid.* 456.

Ejectment.

K **Where** ſeveral Defendants ſever in their Plea, the Plaintiffs may enter *Non Proſs* againſt one any time before the Record ſent down. *Ibid.* 457.

Several Defendants.

L **A** Diſcharge by *Nolle Proſequi* on an Indictment will not maintain an Action for a malicious Proſecution. *Ibid* 456.

Indictment.

See the Forms of entring *Non Proſs. Ibid.*

Non-Tenure.

Non-Tenure.

Non-Tenure, what.

A NON-Tenure is a Plea in Bar. Per Curiam. 1 Mod. Rep. 250.

How to plead Non-Tenure of Part, and of the Whole.

B When the Tenant pleads Non-Tenure of the Whole, he needs not ſay who is Tenant: But if he pleads Non-Tenure to Part, he muſt ſet forth who is Tenant. 1 *Mod.* 181.

When in Bar, when in Abatement.

C What the Plea of Non-Tenure is when in Bar, and when in Abatement. *Ibid.* 250.

Not pleadable after Imparlance.

D Non-Tenure in Part, or in the Whole, is not pleadable after Imparlance. 3 *Lev.* 55.

The Feme received in a Formedon after Non-Tenure pleaded by and found againſt the Baron.

E In a Formedon againſt Baron and Feme, the Baron pleads Non-Tenure; and found for the Demandant; and now the Feme comes, and prays to be received upon the firſt Plea of the Baron, who pleaded Non-Tenure, when ſhe might have traverſed the Gift; and he brought a Writ out of Chancery, *de Attornato Recipiendo* for the Feme, and it was receiv'd. *Cro. Eliz.* 826. *pl.* 30.

Non-uſer, See **Forfeiture.**
Not-guilty, See **Pleas.**

Notice.

See **Acceptance.** **Aſſignment.** **Covenant.** **Leaſe.** **Proviſo.** **Trial.**

Both Plaintiff and Defendant are bound to take Notice of the general Rules of Practice; but muſt give Notice to each other of particular Rules.

F THE Plaintiff and Defendant are both bound at their Peril, to take Notice of the general Rules of Practice of this Court; but if there be a ſpecial particular Rule of Court made for the Plaintiff, or for the Defendant, he for whom the Rule is made, ought to give Notice of this Rule unto the other; or elſe he is not bound generally to take Notice of it, nor ſhall be in Contempt of the Court, although he do not obey it: *Paſch.* 24 *Car. B. R.* For general Rules are the general Practice of the Court, whereof every one muſt take Notice, that hath to do there; but particular Rules are made upon particular and extraordinary Matters happening in the Proceedings, upon the Motion of one of the Parties made to the Court, of which the other may be ignorant, and therefore is to have Notice of them given unto him.

A **The** Court is bound, *ex Officio*, to take Notice of all Matters which do appear upon the Record depending before them, but of Matters *dehors*, *viz.* To ſearch the Almanack for Days, and to compute Times mentioned in the Record, they are not bound, *ex Officio*, to do it. 21 *Car. B. R.* 24 *Car. B. R.*

What the Court is bound to take Notice of, *ex Officio*, and what not.

B **Notice** need not be given, where the Perſon to whom the Act is to be done, is certain. 1 *Lev.* 48.

Need not be given where the Perſon is certain.

C **That** Notice ought to be given of executing a Writ of Inquiry of the Value of the Land, upon a *Grand Cape*. 3 *Lev.* 409.

Muſt be given of executing a Writ of Inquiry, on a *Grand Cape*.

D **The** Courts of *Weſtminſter* will take judicial Notice of the Order and Proceedings of Parliament, and their Committees. 1 *Saund.* 133.

The Courts of *Weſtminſter* will take judicial Notice of the Orders and Proceedings in Parliament.

E **The** Court is not bound to take Notice of the New Style, but of the Old *Engliſh* Style: 21 *Car. B. R.* For the Old is that whereby all Accounts in the Common Law are guided, and not by the New which is Foreign, and goes 11 Days before the *Engliſh* Style or Account: The Old Style is called the *Julian* Account, and the New Style is called the *Gregorian*; the former was made in the Time of *Julius Cæſar* the Emperor, the latter in the Time of Pope *Gregory* XIII.

Court not bound to take Notice of the New Style.

F **The** Common Law doth not take Notice of the Intentions of the Party to do any unlawful Act, except it be in Caſe of High Treaſon: *Trin.* 22 *Car. B. R.* For Man's Law is to regulate the Words and Actions of Men, and not the Thoughts, of which it cannot have Conuſance; but God's Law extends to the Thoughts, and tends to the Regulation of them alſo.

Common Law takes no Notice of Intentions to do an unlawful Act; except in High Treaſon.

G **If** a Declaration be engroſs'd, and put into the Office, although it be not filed, yet is the Defendant's Attorney bound to take Notice of it: *Mich.* 22 *Car. B. R.* For it is the Duty of the Plaintiff's Attorney to put the Declaration into the Office, and the Officer in the Office is to file it; and though it be filed, yet may the Defendant's Attorney take a Copy of it.

When Defendant's Attorney muſt take Notice of the Declaration.

Need not be given of what the other may inform himſelf of.

A **None** is bound by the Law to give Notice to another of that which that other Perſon may otherwiſe inform himſelf of: *Mich.* 22 *Car. B. R.* Except he tie himſelf by ſpecial Covenant and Agreement to do it; for the Law will not put an unneceſſary Trouble upon any Man without his own Conſent.

Remainder Man who is a Stranger, cannot forfeit his Eſtate without Notice.

B **No** Man who is a Stranger to a Deed, that hath an Eſtate by way of Remainder, or otherwiſe, ſhall forfeit or determine his Eſtate by Virtue of any Proviſo in ſuch Deed, unleſs he hath Notice of it. 8 *Rep.* 92.

Needs not be given of what a Man is bound to do.

C **Where** a Man is bound to do a Thing by his own Bond, there needs no Notice, becauſe he hath obliged himſelf by his own Act to do it; but Notice muſt be given of ſecret Things, or Things to be done by a third Perſon.

If Iſſue be join'd in *B. R.* and Plaintiff proceeds not to Trial in a Year, he muſt give a Term's Notice.

D **If** one do commence an Action in this Court againſt another, and joins Iſſue, and yet doth not proceed to a Trial in his Action, by the Space of a whole Year next after he began his Suit, he ought afterwards, by the Rules of the Court, to give the Defendant one whole Term's Notice that he will try his Cauſe, before he proceed to a Trial therein: *Mich.* 22 *Car. B. R.* For his Delay might give Occaſion to the Defendant to conceive, that he intended to let his Action fall, and ſo to neglect to make Proviſion for his Defence at the Trial; and therefore it is but Reaſon that he ſhould have more than ordinary Notice in an extraordinary Caſe.

Notice of Trial in *London* and *Middleſex*.

E **If** Notice of Trial be given in *London or Middleſex*, and not tried that Sitting, the Plaintiff may try it the next Sitting, upon two Days Notice; but if not tried at the next Sitting, then new Notice is to be given as at the firſt, *viz.* eight Days. *Per magiſtrum Liveſay, & al', &c. Paſch.* 21 *Car.* 2.

Cauſe continued four Terms without Proſecution; Defendant ſhall have a Term's Notice to plead.

F **If** a Cauſe doth continue four Terms, without Proſecution before Iſſue joined, the Defendant is to have a Term's Notice to plead, *&c.* before Judgment can be entered by Default; if after Iſſue joined, a Term's Notice of Trial. *Ibid.*

Notice of Trial muſt be given to Defendant, or his Attorney; but to his Counſel is not good.

G **If** Notice for a Trial be given to the Defendant himſelf, or to his Attorney, this is good Notice; but if Notice be given thereof to the Counſel of the Defendant, it is not a good Notice: *Hill.* 22 *Car. B. R.* For Counſel are not bound to take Notice of ſuch a Warning for a Trial, nor to give the Client Notice thereof: And it may be, though one have been formerly of Counſel with the Defendant in other Buſineſs, or in the Cauſe to be tried, yet he may not be of Counſel at the Trial; nor is it the Part of a Counſellor to ſolicit his Client's Buſineſs. *Simile*, 3 *Julii*, 1650. *B. S.*

A **The** Plaintiff and Defendant are both bound to take Notice of ſuch Rules of the Court, as do concern the Proceedings of their Cauſe, at their own Perils: *Hill.* 22 *Car. B. R.* For if they know them not, yet they may inform themſelves by their Counſel and Attornies: But this is only to be underſtood of the general Rules, and not of particular Rules made upon the Motion of either Party; for of ſuch Rules there ought to be Notice given to the Party concerned, by the other for whoſe Advantage the Rule is made. *Paſch.* 24 *Car. B. R.*

Plaintiff and Defendant bound to take Notice of ſuch Rules of Court as concern the Proceedings of their Cauſe.

B **When** Counſel are to argue a Matter in Law in Court, the Judges ought to have Notice thereof given unto them before the Day, except it be where the Court have appointed a ſet Day for it: Or if there be not ſuch Notice given, then the Cauſe is to be put in the Paper of Cauſes, that it may come on in Courſe to be ſpoken unto: *Paſch.* 23 *Car. B. R.* And by putting it in the Paper, the Judges have Notice; for they have a Paper of the Cauſes to be ſpoken to in Matter of Law, the Day before they be ſpoken to, by the Officer of the Court.

When a Matter of Law is to be argued, the Judges muſt have a Day's Notice of it.

C **If** the Plaintiff or his Attorney do give Notice unto the Solicitor of the Defendant, that he intends to try his Cauſe at ſuch a Time; this is a good Notice of the Trial, although it be not given unto the Defendant nor his Attorney: *Paſch.* 23 *Car. B. R.* For it is the Duty of the Solicitor to inform his Client of it; and if he do not, it ſhall be accounted the Folly of the Client to entertain a Solicitor that is ſo careleſs in his Buſineſs, and in this Caſe there is no Default in the Plaintiff.

Notice to a Solicitor is good.

D **The** Plaintiff may, if he pleaſe, give the Defendant Notice when he intends to try his Cauſe, the ſame Day that he hath joined Iſſue with the Defendant in the Cauſe to be tried betwixt them.

Plaintiff may give Notice of Trial the ſame Day he joins Iſſue.

E **If** the Plaintiff gives the Defendant Notice of Trial for the Aſſizes, and doth not proceed accordingly, he muſt before he tries his Cauſe give new Notice.

If Plaintiff gives Notice of Trial at the Aſſizes, and does not proceed, he muſt give new Notice.

F **If** one be bound by the Rule of the Court, to give unto another perſonal Notice of a Thing, it is not ſufficient that Notice be left at the Dwelling-houſe of the Party: *Mich.* 23 *Car. B. R.* For perſonal Notice is Notice given to the Perſon of the Party himſelf, and not to another, or at the Dwelling-houſe of the Party; for Notice may be given there, and yet the Party may not know it: And uſually where perſonal Notice is to be given for the Party to do a Thing, it is very penal to him if he do it not.

If Rule of Court be to give perſonal Notice, Notice left at the Houſe is not ſufficient.

G **It** is ſufficient upon an Action of Treſpaſs and Ejectment brought to try the Title of Land, if the Tenant in Poſſeſſion of the Land have a Copy of the Declaration in Ejectment delivered to him or

Declaration in Ejectment delivered to Tenant in Poſſeſſion, ſufficient without Notice to the Owner of the Land.

his Wife, although he be but an Under-Tenant of the Land, and altho' no Notice thereof is given to the proper Tenant, or to the Owner of the Land whoſe Title is concerned: 23 *Hill. Car. B. R.* and *Paſch.* 24 *Car. B. R.* For the Poſſeſſion of the Land is only recoverable in this Action, and that doth chiefly concern the Tenant in Poſſeſſion of it; and it is he properly in Law that is to defend the Title.

The Law takes Notice of the Clerks of the Commiſſioners of Sewers.

A **A Clerk** of Commiſſioners of Sewers is ſuch a Clerk as the Law takes Notice of. *Hill.* 23 *Car. B. R.* For he is an Officer appointed by Act of Parliament. *Q. Vide* the Statute.

If the Panel of the Jury be returned and then altered, the Party muſt have Notice of it.

B **If** the Panel of the Jury impannelled to try a Cauſe be returned, and the ſame be afterward altered or changed before the Trial, the other Party ought to have Notice of it, otherwiſe it is a Surpriſal of the Party: *Paſch.* 24 *Car. B. R.* For he may not by that Means be prepared for his Challenges, nor to prove them.

If Plaintiff give Notice of Trial, and no Jury be returned, he muſt give the Defendant new Notice.

C **If** the Plaintiff give Notice to the Defendant for a Trial, and there is no Jury returned to try the Cauſe, ſo that the Cauſe cannot be tried at the Day appointed, if the Plaintiff will afterwards try his Cauſe, he muſt give the Defendant new Notice of this Trial: *Paſch.* 24 *Car. B. R.* Elſe the Defendant cannot be able to know againſt what Time he muſt attend to make his Defence; and there was no Default in him that the Jury did not appear.

There ought to be eight Days Notice of the executing a Writ of Inquiry.

D **By** the Courſe of the Court, the Defendant ought to have eight Days Notice, excluſive of the executing of a Writ of Inquiry of Damages, as upon a Judgment by Default, Inquiry of Aſſets, *&c.* *Trin.* 24 *Car. B. R.* That he may prepare to give Evidence to the Jury that are to inquire the Damages for the Mitigation of them.

B. R. is not bound to take Notice of what is done at the Aſſizes.

E **This** Court is not bound to take Notice of Orders made, and of Things which are done at the Aſſizes, although it be by a Judge of this Court; becauſe he acts not there as a Judge of this Court: *Mich.* 24 *Car. B. R.* For the Juſtices of Aſſize, *&c.* do act by ſpecial Commiſſions, and not as Judges of the Common Law of any of the Courts at *Weſtminſter*; but the Manner is upon an Order made at the Aſſizes, to get it drawn up by the Clerk of the Aſſizes, and to move the Court the next Term to have it made a Rule of Court; and when that is done both Parties ſhall be bound by it.

Either Party ought to give Notice to what they intend to move, and when.

F **When** either the Plaintiff or Defendant doth intend to move the Court in any Matter which may prove diſputable, the Party that thus intends to move, ought to give Notice to the other Party, that he doth intend to move the Court in it, and to expreſs for what he will move, and when: *Mich.* 1650. *B. S.* That he againſt whom the Motion is to be made, may not be ſurprized, but may have Time to provide, and may attend the Court to defend himſelf, and anſwer the Motion, which the Court will give him Time to do; ſo that if ſuch Notice be not given him, the Motion will be to no Purpoſe as to the deciding of the Difference in Queſtion.

A **If** the Plaintiff do give unto the Defendant Notice for a Trial, before Iſſue joined in the Cauſe; this is no good Notice: *Hill.* 1649. 5 *Feb. B. S.* For before Iſſue joined, there is nothing to be tried; and ſo this is a vain Notice, and to no Purpoſe; and ſo the Party, if he ſhould attend upon ſuch Notice, might loſe his Pains and Coſts.

Notice before Iſſue joined, is not good.

B **There** cannot be any Motion made for a Trial at the Bar, until Iſſue is joined; for until Iſſue joined there cannot be any *Venire* regularly made.

No Motion for Trial at Bar, 'till Iſſue be joined.

C **If** the Plaintiff carry down his Cauſe to be tried at the Aſſizes, and it be not then tried by his own Default, but for want of Time; it will not be ſafe for him to bring it down again at the next Aſſizes, to try it, without giving of the Defendant new Notice of this Trial; alſo if he do not bring it down to be tried at the next Aſſizes, and yet will try it at another Aſſizes after that, he muſt give the Defendant new Notice before he try it: *Paſch.* 1650. *Paſch.* 1656. between *Aſkue* and *Landye*, 6 *Maii*, *B. S.* For the Defendant may doubt whether he will try it or no, having deſiſted ſo long from trying it, and ſo might be ſurprized, if he ſhould not have new Notice of the Trial; or elſe be put to needleſs Trouble and Charge in attending, in Caſe he ſhould not try it; and the giving of new Notice is very little Trouble.

If a Cauſe be not tried at the Aſſizes for want of Time, if the Plaintiff will bring it down to the next Aſſizes, he were beſt give new Notice of Trial.

D **It** is a ſufficient Notice for the Plaintiff's Attorney to tell the Defendant's Attorney, That he hath put in a Declaration into the Office againſt his Client; and he is not bound to give him a Copy of it: 13 *Nov.* 1650. *B. S.* For there he may take a Copy of it; but uſually they do deliver Copies to one another of the Declarations and Pleadings in their Clients Cauſes, and it is very rarely omitted, ſo that now the Attorneys do expect it.

Plaintiff's Attorney need only tell the Defendant's, that he has lodged a Declaration in the Office.

E **Eight** Days Notice is ſufficient to be given for a Trial to be had at any Aſſizes in *England*, although the Defendant live in any Place in *England*.

Eight Days Notice of Trial at the Aſſizes ſufficient all over *England*.

F **If** one be bound by an *Aſſumpſit* generally to do a Thing to another, he to whom the Promiſe is made, muſt give him Notice when he will have him to do it, becauſe it is in his Election when he will have it done; but if he promiſe that another Perſon ſhall do it to him, there he to whom the Thing is to be done, is not bound to give Notice to that other Perſon when he will have it done, but the Party muſt procure it at his Peril: 13 *Maii*, 1651. *Paſch. B. R.* For it may

If *A.* be bound generally to do a Thing to *B. B.* muſt give Notice when he will have it done: But if *A.* promiſe that a third Perſon ſhall do it, he muſt procure it to be done at his Peril.

may be he may not know that other Perſon, and there is no Privity of Contract between them two, as there is betwixt the other two.

Rules of Notice on *Aſſumpſits.*

See in the 2d Part of *Inſtructor Clericalis*, for the Rules of Notice, Requeſt and Demand, upon *Aſſumpſits.* A

Where the Heir muſt have Notice of his Father's Will.

See alſo *Keble*'s Tables, where Notice ought to be given to the Heir, of his Father's Will. 1 *Lutw.* 804, 809. B

Need not give Notice of Aſſignments by Commiſſioners of Bankrupts.

Notice is not neceſſary to be given of an Aſſignment by Commiſſioners of Bankrupts. *Id.* 456. C

After a *Ne recipiatur* entred, the Plaintiff in fair Practice ought to give new Notice of Trial.

After a *Ne recipiatur* is entred into the Judges Book, ſo that the Cauſe cannot be tried at that Time, if the Plaintiff will try his Cauſe afterwards at another Time, according to fair Practice, he ought to give the Defendant new Notice before his Trial; but in Strictneſs of Practice he is not bound to give new Notice of it; for the firſt Notice is to ſerve for all that Term, and a *Ne recipiatur* ſerves only to hinder the Trial for that Day, whereon it was ſet down in the Judges Book to be tried; and it may be the Plaintiff would have tried it at that Day, had not the *Ne recipiatur* been entred to hinder him. *Trin.* 1651. *B. S.* This is to be underſtood of Cauſes that are to be tried by the Judges every Term, and ſome Days after the Term in *London* and *Middleſex*, and not of Cauſes to be tried at the Aſſizes. D

Needs no Notice of a Rule of Court, unleſs the Rule itſelf order it.

One is not bound to give Notice to another of a Rule of Court made againſt him, except Part of the Rule be, that Notice ſhall be given unto him of the Rule: *Trin.* 1651. *B. S.* For it is intended that his Attorney or Solicitor was in Court when it was made, and that he did take Notice of it from them; or elſe that there needs no Notice in the Caſe, becauſe that the Party ought to have done that which he was ordered to do without the Rule made in the Caſe. E

If a Trial be deferred longer than one Term after Notice, a whole Term's Notice muſt be given before Trial.

If one give Notice of a Trial to the Defendant, and yet doth not try his Cauſe at the Day appointed, but doth defer his Trial for longer Time than one Term after; if after that he will try it, he muſt give a whole Term's Notice before his Trial; but if he try it the next Term after, there needs no new Notice; for if the Plaintiff try it not, then the Defendant may try it by Proviſo. *Trin.* 1652. *B. S.* F

Defendant muſt give the Plaintiff Notice, if he will try the Cauſe by Proviſo.

If the Defendant will try the Cauſe by Proviſo, he ought to give the Plaintiff due Notice that he will try it, and may not take the Advantage of the Notice formerly given by the Plaintiff. 1654. *B. S.* Becauſe it lies in the Election of the Defendant either to try the Cauſe by Proviſo, or not to try it; and the Plaintiff cannot preſume he will try it, being Defendant in the Action, except the Defendant give him Notice that he will try it. G

A **If** one give Notice to another that he will move the Court in one Thing, and tells him in what; and at the Time he moves the Court in another Matter, and not in that whereof he gave Notice that he would move the Court in; this is not good Notice of the Motion, but the Court will give the Party farther Time to anſwer the Motion: By *Rolle* Chief Juſtice; for by ſuch deceitful Notice, the Party concerned cannot prepare to anſwer the Motion, and ſuch Notice is accounted no Notice.

If the Party gives Notice that he will move for ſuch a Thing, and moves for another, the Court will give farther Time to anſwer the Motion.

B **This** Court is not bound, *ex Officio*, to take Notice of private Orders made at the Council Table: By *Rolle* Chief Juſtice: For they are Matters but of particular Concernment, and not Matters of Law or publick Buſineſſes, whereof, as Judges, they are to take Notice.

B. R. not bound to take Notice of private Orders of Council.

C **In** the Caſe of *King* and *King*, *Paſch.* 1659. It was held by the Court, That if the Plaintiff do give wrong Notice of a Trial, and after that gives a right Notice, but not timely enough, according to the Rules of the Court; this is not a good Notice, for the firſt Notice is not taken for any Notice. *Q.*

If the Plaintiff gives wrong Notice of Trial, and after gives a right Notice, but not in Time, it is not good.

D **Notice** given in the Night of a Robbery by the Party robbed, with an Intent that Hue and Cry ſhould be made after the Felons, is good Notice according to the Statute, if it be given in convenient Time after the Robbery was done. By *Rolle* Chief Juſtice: For it may be it could not be given ſooner.

How Notice of a Robbery to be given.

E **It** is not neceſſary to give Notice of a Robbery in the Vill that is next within the Hundred where the Robbery was done, and unto that Place where it was done; for if the next Vill be out of the Hundred, yet Notice given there is good Notice, according to the Statute of *Wincheſter*. *Vide* the Statue. Vid. Tit. **Hue and Cry.**

Notice of a Robbery given in a Vill out of the Hundred, is good.

F **Where** an Act is to be done by a Stranger and not by the Plaintiff, the Conuſance thereof lies as well in the Notice of the Defendant as of the Plaintiff; and therefore the Plaintiff need not lay a Notice. *Cro. Jac.* 492. *pl.* 3. 494. *Cro. Car.* 132. *pl.* 7.

Where an Act is to be done by a Stranger, the Plaintiff need not to give Notice.

G **But** where one may take Notice and not the other, there Notice is neceſſary. *Latch.* 15.

Where Notice is neceſſary.

H **Notice** is not to be given ſo ſtrictly upon a Covenant as upon a Bond, which is Point of Forfeiture. *Cro. Jac.* 391.

Notice is not to be given ſo ſtrictly upon a Covenant as upon a Bond.

I **If** an Agreement be that the Defendant ſhall pay ſo much as *J. S.* hath paid, the Defendant at his Peril ſhall inquire of him, and the Plaintiff is not bound to give Notice: But where the Perſon is altogether uncertain, there the Plaintiff, to entitle himſelf to an Action, ought to give Notice. *Cro. Jac.* 432. *pl.* 12. 433.

Where the Plaintiff ought to give Notice, and where not.

Where, upon a Condition of a Bond, the Defendant muſt take Notice at his Peril.

A Where the Condition of a Bond was, at the End of the Term to deliver up the Poſſeſſion to *A. B.* his Heirs and Aſſigns, *A. B.* grants his Reverſion to *C.* who at the End of the Term demands the Poſſeſſion of the Obligor who had not delivered it: And after a Verdict, moved, that the Breach aſſigned was not ſufficient, becauſe he doth not ſhew that he gave the Defendant Notice that the Reverſion was granted to him. *Curia.* It being in the Condition of a Bond, it is at the Defendant's Peril to take Notice, being obliged to deliver it to him or his Aſſigns. *Cro. Jac.* 475. *pl.* 8. 476.

An order of Seſſions cannot be quaſh'd without Affidavit of Notice.

B The Court will not quaſh an Order of Seſſions without Affidavit of Notice to the Parties concerned. 5 *Mod.* 454.

Where Notice of an Election into an Office, ought not to be given.

C Where a Member of a Corporation is choſen into an Office, there need not be any Notice given him, becauſe it ſhall be ſuppoſed that he was preſent at the Election. 5 *Mod.* 442. See Title By-Law.

Notice muſt be now given of a Grant of a Reverſion or Remainder, inſtead of Attornment, by the Statute of 4 & 5 Ann.

D Where a Reverſion or Remainder is granted where there ought to be Attornment, it ſhall now be good, by the Statute of 4 & 5 *Annæ*, without Attornment; but in ſuch Caſe the Tenant ſhall not be prejudiced by Payment of any Rent to ſuch Grantor or Conuſor, or by Breach of any Condition for Non-payment of Rent before Notice ſhall be given him of ſuch Grant by the Conuſee or Grantee.

The Court is bound to take Notice of all Publick Acts.

Not of Private.

How publick Acts are proved.

How particular Acts.

E This Court is to take Notice of a General Statute, *viz.* ſuch an one as concerns the Publick; for that is become a general Law, that every Perſon is bound to take Notice of: But not of a particular Statute, which concerns ſome particular Part of the Kingdom, or particular Perſons only, in their private Intereſts; for thoſe publick Statutes are proved by ſhewing the printed Statute-Book. But a particular Statute muſt be proved by an Exemplification or Copy examined by the Record itſelf, and muſt be ſet forth particularly in all Declarations and Pleadings: But upon a general Act the Plaintiff may ſay, That the Defendant did ſuch a Thing *contra formam Statut' in hujuſmodi caſu edit' & proviſ.*

What Notice of Trial is good for *London* and *Middleſex.*

When if forty Miles diſtant.

F The Defendant ought to have eight Days Notice, excluſive of the Day that Notice was given, of the Trial of the Plaintiff's Cauſe, before it be tried in *London* or *Middleſex*, if he lives under forty Miles from thence; but if he lives forty Miles or above, from thence, he ought to have fourteen Days Notice excluſive before the Trial, that the Defendant may have convenient Time for his Journey, and to prepare his Counſel and Witneſſes for his Trial:

And if due Notice be not given, the Court, upon Motion, will grant a new Trial: Becauſe he was ſurprized in the Trial for want of due Notice.

If not good, there will be a new Trial.

A **If** the Plaintiff gives the Defendant Notice, that he will try his Cauſe the firſt Sitting in the next Term; this is a good Notice given of the Trial, although he doth not expreſly ſay upon what Day of the Month or Week it is: For the Defendant may inform himſelf of the preciſe Day when that Sitting will be; the Sittings being ſet up in the King's Bench Office, or at the Chief Juſtice's Chamber, as ſoon as they are appointed by the Chief Juſtice.

Notice for the firſt Sitting in the next Term, is good.

B **The** Party that intends to move the Court in a queſtionable Matter, ought to give Notice thereof to the Party againſt whom he intends to move, or to his Attorney or Solicitor, and not to his Counſel; for ſuch Notice is not good: For the Counſel is not concerned to take Notice of any Thing but from his Client; nor bound to ſeek out his Client to give him Notice.

To whom Notice of a Motion is to be given.

C **Where** Notice is material, a general *Præmiſſorum non ignarus* is not ſufficient; but it ought to be ſpecially alledged. 5 *Rep.* 93.

Where Notice is material, it muſt be ſpecially alledged.

D **Where** a Thing is to be done by the Plaintiff himſelf, there Notice ought to be given; but otherwiſe in the Caſe of a Stranger. By *Banks* Chief Juſtice. *March* 109. *pl.* 186. So likewiſe where a Thing lies in the Knowledge of the Plaintiff, there ought to be Notice. 156, *pl.* 225. *Cro. Jac.* 150. *pl.* 10. Where I am bound to make ſuch Aſſurance as *J. S.* ſhall deviſe, I am at my Peril, to procure Notice; but if I am bound to give you ſuch Aſſurance as your Counſel ſhall adviſe, there Notice ought to be given to me. 1 *Leon.* 115. Caſe 141. *Cro. Car.* 137.

Where Notice ought to be given and where not.

E **Where** a Man promiſes to pay ſo much at the Day of the Plaintiff's Marriage: Adjudged by three Judges againſt one, that the Defendant is at his Peril to take Notice of the Marriage; and *licet ſæpius requiſitus*, without ſhewing the Day of the Requeſt, is good. *Cro. Car.* 34. *pl.* 8. 35.

Where Notice of Marriage not neceſſary. *Licet ſæpius requiſitus*, is good.

F **Where**, upon Notice of Trial, the Defendant makes Affidavit that he attended with his Counſel and Witneſſes, and the Plaintiff did not proceed to Trial, the Court here will make a Rule for the Secondary to tax the Defendant his Coſts, if he finds that Coſts ought to be taxed.

Where upon Notice of Trial, the Defendant attended with his Witneſſes, the Court will give him Coſts.

G **A Leaſe** is made upon Condition to be void if the Leſſee, his Executors or Aſſigns, did not repair within ſix Months after Notice; this Notice muſt be given to the Leſſee or Perſon intereſted in the Term, and not to an Under-Leſſee, although upon the Land. *Cro. Jac.* 9. *pl.* 11.

To whom Notice muſt be given to make a Breach of a Condition.

Notice ſhall be intended after a Verdict.

Upon a Promiſe to pay 100*l.* upon Marriage, he lays a Requeſt, but doth not lay any Notice of the Marriage, and yet held good: For it is a neceſſary Intendment, that when after the Marriage he requeſted Payment of the Money, that Notice was given of the Marriage. *Cro. Jac.* 228. *pl.* 4. 229. A

Where Notice ſhall affect a Purchaſor.

Notice of Incumbrances to him that purchaſes for another, ſhall affect the Purchaſor himſelf. *Chanc. Rep.* 38. B

What Notice ought to charge a Purchaſor.

Notice to charge a Purchaſor, ought to be compleat and perfect. *Ibid.* 291. C

Both Plaintiff and Defendant may give Notice of Trial for the ſame Day.

To be tried according as the firſt *Diſtringas* comes in.

When the Defendant hath given the Plaintiff Notice of trying the Cauſe by Proviſo, the Plaintiff may alſo give him Notice of Trial, and both of them may return *Venires*, and ſeveral Records of *Niſi Prius*: But if the Plaintiff's Writ of *Diſtringas* comes firſt to the Sheriff, he cannot execute the Defendant's Writ: But if the Defendant's comes firſt, and he will not proceed to Trial, the Plaintiff may then bring in his, and proceed to Trial if he thinks fit: The Words of the Writ of *Diſtringas* are, *Proviſo ſemper, quod ſi duo brevia tibi venerint, unum tantum eorundum exequaris & retorn'.* D

No Perſon is bound to give Notice of a Deviſe.

Where no Perſon is bound to give Notice of a Deviſe to a Deviſee, he ought to take Notice of it at his Peril. 4 *Rep.* 82. *b.* E

Nuncupative Wills, See **Wills.**

Nuſance.

See {**Action.**
Quod Permittat.

See **Action.**
See **Quod Permittat.**

Nuſance, what.

Nuſance is either Publick or Private: Publick is where any Thing is erected in the King's Highway, which any Man may remove, or the Party may be indicted for it: But a private Nuſance, is where any Man ſtoppeth his Neighbour's Lights, or annoys him in any other Manner; an Action on the Caſe, or an Aſſiſe of Nuſance, lies againſt the Tortfeaſor. F

Perſons prejudiced may remove a common Nuſance.

A common Nuſance may be abated or removed by thoſe Perſons who are prejudiced by it: *Paſch.* 23 *Car. B. R.* And they are not compellable to bring Actions to remove them. G

A **A Nuſance** *ad commune Nocumentum* ſhall be reformed at the King's Suit; but one *privatum dampnum*, by Action at the Suit of the Party grieved; and a Treſpaſs made to ſeveral Commoners is *Privatum dampnum* only. 9 *Rep.* 113. *a.*

How a Common Nuſance muſt be reformed, and how a Private Nuſance.

B **An** Action on the Caſe, or an Aſſize, at the Plaintiff's Election, lies for ſtopping up of a Way to his Freehold. *Cro. Eliz.* 466. *pl.* 22. 845. *pl.* 32. 520. *a.*

Caſe or an Aſſize lies for ſtopping of a Way to the Plaintiff's Freehold.

C **Where** the erecting a new Fair or Market in a Town next to any other Fair or Market, ſhall be a Nuſance, and where not. 2 *Saund.* 173, 174. *Vide Lutw.* 69, 91.

Where erecting a Fair or Market is a Nuſance, and where not.

D **A Nuſance** made in a Port or Haven by the ſinking of a Ship there, ought to be removed by the Owner of the Ship; and if he do not, he may be indicted for it, for making a common Nuſance: 21 *Car. B. R.* For it is prejudicial to the Commonwealth in hindring of Navigation and Trade.

Sinking a Ship in a Port, is a common Nuſance and ought to be removed by the Owner.

E **The** Diverſity between a *Quod permittat*, or an Aſſiſe for a Nuſance, and an Action upon the Caſe for a Nuſance is, That a *Quod permittat*, and a Writ of Aſſiſe, are to abate the Nuſance; but an Action on the Caſe, is only to recover Damages: Therefore, though the Nuſance be removed, the Plaintiff is entitled to his Damages which accrued before; and it is uſual in theſe Actions to lay a *Continuando* longer than the Plaintiff can prove, but he ſhall have Damages for only what he can prove. 2 *Mod.* 253.

Diverſity between a *Quod permittat*, and an Action for a Nuſance.

How to lay the *Continuando* in the Action.

F **The** Continuation of a Nuſance is as it were a new Nuſance. 2 *Leon.* Caſe 129. And ſo was the Opinion of the Chief Juſtice *Holt* in *Prior*'s Caſe. See *Cro. Eliz.* 402. *pl.* 11.

* The Continuance is a new Nuſance.

G **Where** a Nuſance is erected in the Time of the Deviſor, and continued afterwards, it is as the new erecting of ſuch a Nuſance. *Cro. Jac.* 231. *pl.* 10.

The Continuance is as the new erecting.

H **A Man** erects a Nuſance and lets it, a Requeſt to abate it made to the Leſſee, who ſaid, That he had not any Authority ſo to do: But adjudged againſt him; for the Continuance is a Nuſance by the Leſſee againſt whom the Action well lies. *Cro. Jac.* 373. *pl.* 3. 555. 18. *Moore, fol.* 353.

A Man erects a Nuſance and lets it, the Continuance is a Nuſance in the Leſſee.

I **Where** a Nuſance is levy'd in an Houſe, Wall, *&c.* to the Prejudice of another, and then it is aliened to another: An Action lies againſt him that levied it; and alſo againſt the Alienee for continuing of it. 13 *Ed.* 1. *cap.* 24.

An Aſſiſe of Nuſance lies againſt an Alienee, after the Alienation to him.

13 **Ed. 1. cap. 24.**

K **An** Action on the Caſe lies not for a Common Nuſance in the Highway; for if one may have it, every one may: But if any particular Perſon after

Where an Action lies for a Nuſance, and where not.

the Nuſance, hath more Damage than another, an Action will lie: 5 *Rep.* 73. *a.* See 4 *Rep.* 18. *a. Vaugh.* 341. For this the Law hath provided an apt Remedy, by Preſentment in the Leet or Turn, unleſs any Man hath a particular Damage; as if he and his Horſe, or his Servant and Horſe, fall into a Ditch made croſs the Highway, whereby he receives Hurt or Damage, or whereby he loſt his Service: Here for this ſpecial Damage, which is not common to others, an Action lies. *Co. Lit.* 56. *a. Cro. Jac.* 446. 4 *Bulſt.* 344. *Carthew* 193.

Where the Party ſhall have an Action for ſpecial Damage, and where not.

A **Upon** ſuch ſpecial Damage by a foundrous Way, an Action lies againſt a Corporation, or private Perſon, that is bound to repair: But if a Townſhip not corporate be bound to repair, the Party *quoad* his ſpecial Damage is without Remedy. *Vaugh.* 340. See *Cro. Eliz.* 664.

An Action lies for the ſtopping of a Water-courſe, (without ſaying, *Antient*) whereby the Plaintiff's Land was flowed.

B **Caſe** for ſtopping of a Water-Courſe, *inceſſanter decurren.* by his Land, by which his Land was drowned and Graſs rotted; but he had not ſaid, that the Water ran ſo Time out of Mind. *Curia.* If the Water had run there but a Year, if the Defendant had diverted it, ſo as he drowned the Plaintiff's Lands, an Action lies. 4 *Leon.* Caſe 305.

Caſe lies not for Conies eating Plaintiff's Corn, but he may kill them upon his Ground.

C **If** a Man makes Coney-Burrows in his own Land, which increaſe ſo much that they deſtroy his Neighbour's Corn; Caſe doth not lie for it: But the Remedy is to kill them upon the Ground. 5 *Rep.* 104.

Who may erect a new Dove-houſe.

D **Alſo,** none but a Lord of a Manor, or the Parſon, can erect a Dove-cote *de Novo:* If he do, it is puniſhable in the Leet; but no Action lies for it: 5 *Rep.* 104. *b. Cro. Eliz.* 548. *accord.* But ſee the Caſe of *Dewell* and *Saunders*, in *Cro. Jac.* 440. *pl.* 11. to the contrary, *viz.* That any Freeholder may erect a Dove-cote upon his own Ground. See alſo *Cro. Jac.* 382. *pl.* 10. *Moore*, Caſe 372.

For ſhooting of a Pigeon, is Impriſonment for three Months, or Payment of twenty Shillings.
1 **Jac.** 1. **cap.** 27. **ſect.** 2.

E **Every** Perſon who ſhall ſhoot at and kill a Pigeon, ſhall by two or more Juſtices of the Peace, be committed to the Common Gaol for three Months, or pay twenty Shillings to the Poor of the Pariſh. 1 *Jac.* 1. *cap.* 27. *ſect.* 2.

Not to aſſign a ſpecial Nuſance where it is apparent.

F **No** ſpecial Nuſance need be aſſigned, when it appears to the Court to be a Nuſance. 9 *Rep.* 54. *a. b.*

An Action lies for an Inn-keeper againſt a Tallow-chandler, for erecting a Furnace near his Inn, to the Nuſance of his Gueſts.

G **It** lies for an Inn-keeper againſt a Tallow-chandler, for erecting and uſing of a Tallow-Furnace ſo near his Inn, that many of his Gueſts left his Houſe, and ſeveral of his Family became unhealthful: And though it was inſiſted upon to be a lawful Trade, and cannot be ſaid to be a Nuſance, the Court ſaid, *Sic utere tuo ut alienum ne lædas. Cro. Car.* 570. *pl.* 3.

A **Caſe** lies for erecting of a Wood-Pile ſo near his Houſe, that he ſtopp'd his Lights: And alſo for erecting of an Hog-ſtie, and keeping of Hogs in it, ſo near to his Parlour, that he loſt the Benefit of it. 9 *Rep.* 57. *b.* 58. *a. b.*

For ſtopping of Lights.

B The four Things deſired to an Houſe, are,
1ſt, *Habitatio Hominis.*
2dly *Delectatio Inhabitantis.*
3dly, *Neceſſitas Luminis.*
4thly, *Salubritas Aeris.* 9 Rep. 58. b.

The four Things deſired to an Houſe.

C **An** Action lies for hindering of the wholeſome Air; and alſo for corrupting of the Air: But it doth not lie for ſtopping of a Proſpect, which is Matter only of Delight, not of Neceſſity. 9 *Rep.* 58. *b.*

An Action lies for Matters of Neceſſity, not of Delight only.

D **Where** there hath been an ancient Brewhouſe Time out of Mind, although in *Cheapſide* or *Fleet-ſtreet*, &c. this is not any Nuſance; becauſe it ſhall be ſuppoſed to be erected when there were no Buildings near: But if a Brewhouſe ſhould be now erected in any of the High-Streets or trading Places, there it ſhall be a Nuſance, and an Action on the Caſe lies for whomſoever receives any Damage thereby: And accordingly, in an Action brought by one *Robins*, a Laceman, in *Bedford-ſtreet*, againſt a Brewer, for a Nuſance from the Brewhouſe, to the Goods in his Shop, (it being a Brewhouſe of ten Years ſtanding) the Jury gave for two Years Damages ſixty Pounds. *Trin.* 8 *W. C. B.* See *Palmer* 536, 537. *Hutton* 135, 136.

An ancient Brewhouſe in an High-ſtreet is no Nuſance, and why.

But a new erected One is.

E **Where** it lies for an Inn-keeper againſt a Tallow-chandler, for melting of ſtinking Tallow ſo near his Houſe, that it annoyed his Gueſts. 2 *Roll. Abr.* 140, 141. *Danv.* 173.

Lies againſt a Chandler for melting of ſtinking Tallow.

F **It** lies for melting of Lead ſo near to the Plaintiff's Cloſe, that it ſpoiled his Graſs and Wood there growing, and he loſt two Horſes and a Cow depaſturing there: Though this was a lawful Trade, and for the Benefit of the Nation, and neceſſary, yet this ſhall not excuſe the Action. For he ought to uſe this Trade in waſte Places, and great Commons remote from Incloſures, ſo that no Damage may happen to the Proprietors of the Land next adjoining. 2 *Roll. Abr.* 140, 141. See *Hutt.* 136. *Palm.* 536.

It lies where Damage is done to a Man's Paſture Ground by a Melting-houſe.

G **An** Action will not lie for a Nuſance for which no Man hath a particular Damage. *Vaugh.* 335, 341.

Who may have an Action for it.

H **The** King may pardon a tranſient Nuſance. *Vaugh.* 333.

What Nuſances may be pardoned.

I **Where** Conies come into any Man's Land, he may take them and make Profit of them. *Cro. Eliz.* 548.

Any Man may take Conies upon his own Land.

Erecting of a Gate croſs an Highway, is a Common Nuſance.

It was held by three Judges againſt one, That the erecting of a Gate croſs an Highway, which Gate might be opened and ſhut by Paſſengers with Eaſe, is in itſelf a Common Nuſance: For it is not ſo eaſy and free a Paſſage, as if there had been no Incloſure. *Cro. Car.* 184. *pl.* 3. 185. A

And any Perſon may lawfully cut it.

Alſo adjudg'd, That every Perſon may remove a Nuſance; and that the Cutting of a Gate ſet croſs an Highway, is lawful. *Ibid.* B

Lights.

If one erects a Houſe which ſtops my Lights, I may pull it down. *Salk.* 459. C

Declaration.

In Caſe for ſtopping Lights, it muſt appear that the Lights were antient. *Ibid.* D

Ibidem.

And *Conſuevit* after Verdict therein, imports Time out of Mind. *Ibid.* E

Againſt whom the Action.

Tenant for Years erects a Nuſance, and makes an Under-Leaſe to *B.* an Action lies againſt either. *Ibid.* 460. F

Quod permittat.

Where a *Quod permittat proſternere quædam Edificia adnocumentum, &c.* lies. *Ibid.* 458. G

Juſtification.

In a Juſtification of abating a Nuſance it need not be ſhewn that he did it, doing as little Hurt as could be. *Ibid.* 458, 9. H

Nuſance at Common Law.

Keeping Swine in a City is a Nuſance at Common Law, and indictable. *Ibid.* 460. I

Oath.

See { Evidence.
Witneſs.

Common Law obliges Officers to take an Oath, for their due Execution of Juſtice.

Officers of Juſtice are by the Common Law bound to take an Oath for their due Execution of Juſtice. *Trin.* 22 *Car* 1. *B. R.* So careful is the Law to have Juſtice done to all Parties. K

Oath againſt Oath: What the Court will do.

By *Glyn*, Chief Juſtice: *Trin.* 1656. *B. S.* If Oath be made againſt Oath, in a Cauſe depending in Court, this is a *non liquet* to the Court, which Oath is true; and there the Court will take that Oath to be true, which is to affirm a Verdict, Judgment, or other Act of the Court, and not that L that which is made to deſtroy them; for this tends more to the Honour of the Court, and to the expediting of Juſtice.

The Plaintiff ſhall rather be believed than the Defendant.

A The Court will rather believe the Oath of the Plaintiff, than the Oath of the Defendant, if there be Oath againſt Oath; becauſe it is ſuppoſed, That the Plaintiff hath Wrong done him, and that the Defendant is the Wrong-doer, and may therefore be rather ſuppoſed to ſwear falſly to protect himſelf from the Juſtice of the Law, than the Plaintiff that is forced to fly to the Law, to obtain his Right. *Paſch.* 23 *Car. B. R.*

Two Oaths may be given to a Witneſs.

B One that is to be a Witneſs in a Cauſe, may have two Oaths given him, one to ſpeak the Truth to ſuch Things as the Court ſhall aſk him concerning himſelf, or other Things which are not Evidence in the Cauſe; and the other to give Teſtimony in the Cauſe, in which he is produced as a Witneſs. The former is called an Oath upon a *Voyer dire*, to ſpeak the Truth. *Paſch.* 23 *Car. B. R.*

The Act requiring Practicers of the Law to take the Oaths, and ſubſcribe the Declaration.

C By an Act made in the 7 & 8 *W.* 3. *cap.* 24. intituled, *An Act requiring the Practiſers of the Law to take the Oaths, and ſubſcribe the Declaration therein mentioned*, it is enacted, That if any Perſon, after the 25th of *May*, 1696. ſhall act as a Serjeant at Law, Counſellor at Law, Barriſter, Advocate, Attorney, Solicitor, Proctor, Clerk or Notary, by practiſing in Manner as ſuch, in any Court whatſoever, not having before the Time of ſuch acting, taken in the Court of Chancery, or King's Bench, or Quarter-Seſſions of the County wherein he lives, the Oaths mentioned and appointed to be taken, by an Act made 1 *W.* & *M.* intituled, *An Act for the abrogating of the Oaths of Allegiance and Supremacy, and appointing other Oaths*; and ſubſcribed the Declaration appointed to be made, in and by one Act made in the 25th Year of *Car.* 2. *cap.* 2. intituled, *An Act for preventing Dangers which may happen from Popiſh Recuſants*; ſuch Perſons ſhall incur all the Pains, Penalties and Forfeitures mentioned in the Statute of *Proviſion and Præmunire*, made 16 *R.* 2. *cap.* 5.

Præmunire.

The Quakers Affirmation inſtead of an Oath.

7 & 8 W. cap. 34.

D By the Act of 7 & 8 *W.* 3. *cap.* 34. it is enacted, That every Quaker, who ſhall be required upon any lawful Occaſion to take an Oath in any Caſe, ſhall inſtead thereof make his ſolemn Affirmation: *I* A. B. *do declare, in the Preſence of Almighty God, the Witneſs of the Truth of what I ſay*, (and then he goes on with his Teſtimony:) Which ſolemn Affirmation is declared to be of the ſame Force, as if he had taken an Oath in the uſual Form. And if ſuch Quaker ſhall affirm falſly, and be thereof convicted, he ſhall incur the ſame Penalties as Perſons convicted of wilful and corrupt Perjury do ſuffer. *Note*, This Act was continued by another Act, made the 13 & 14 *W.* 3. *cap.* 4. for eleven Years, and from thence to the End of the next Seſſion of Parliament.

A Quaker not bound to take an Oath, but his ſolemn Affirmation ſerved.

7 & 8 **W.** 3. **cap.** 34.

A **Upon** the return of the *Mandamus* it appeared, That the Plaintiff was a Quaker, and refuſed to take the Oath that all others take, upon their Admiſſion into the Freedom of the Corporation. *Curia.* This Perſon hath a precedent Right to have his Freedom; The Quakers are uſually admitted in *London* upon their ſolemn Affirmation; and ſo it was in this Caſe. 5 *Mod.* 402, 403.

What Puniſhment for a Freeman of a Corporation breaking of his Oath.

B **A Freeman** of a City or Corporation, ſhall not be charged in any Judicial Court, for the Breach of an Oath which he takes when he comes to be a Miniſter, Citizen, or Member; yet if he Acts contrary to it, this doth very much enforce his Amotion, and is a Condition in Law annexed to his Freedom. 11 *Rep.* 98. *a.*

Peers are to be ſworn to give Evidence in all Cauſes between Party and Party.

C **The** Lords in all Caſes, where they are to be Witneſſes between Party and Party, ought to be ſworn. *Cro. Car.* 64. *pl.* 8.

So alſo when ſued in Chancery, *&c.*

D **Alſo** when they have been impleaded in Chancery, the Star-Chamber, or Court of Wards, they have always been ſworn. *Ibid.*

An Act againſt prophane Curſing and Swearing.

6 & 7 **W.** 3. **cap.** 11.

E *An Act for the more effectual ſuppreſſing prophane Curſing and Swearing*, made 6 & 7 *W.* 3. *cap.* 11.

The Oath of the Judges.

18 **Ed.** 3. **Stat.** 4.

F **The** Oaths of the Judges of both Benches. 18 *Edw.* 3. *Stat.* 4.

The Oaths of Clerks in Chancery, and Curſitors.

18 **Ed.** 3. **Stat.** 5.

G **The** Oaths of the Clerks in Chancery, and of the Curſitors. 18 *Ed.* 3. *Stat.* 5.

Witneſſes ſhall be ſworn to give Evidence for Perſons indicted of High Treaſon, or other capital Crimes.

Stat. 1 **Annæ. cap.** .

H **One** that is to teſtify on the Behalf of a Felon, or Perſon indicted for High Treaſon, or other capital Offence, upon an Indictment at the King's Suit, could not be examined upon his Oath for the Priſoner againſt the King, but he might be examined without giving him his Oath. But now by a late Statute made 1 *Annæ. cap.* . they are to be ſworn; and if convicted of wilful Perjury, ſhall ſuffer the Puniſhment to be inflicted for thoſe Offences. See Title **Witneſſes.**

The Teſt Act, and the Oaths of Allegiance and Supremacy.

I **The** Teſt Act was made 25 *Car.* 2. *cap.* 2. and ſince by 1 *W.* & *M. cap.* 8. the Oaths of Allegiance and Supremacy were taken away: And an Act made to declare the Alterations in the Oath appointed to be taken by ſeveral former Acts. Alſo in 13 & 14 *W.* 3. *cap.* 6. there was made an Act, intituled, *An Act for the further Security of his Majeſty's Perſon, and the Succeſſion of the Crown in the Proteſtant Line, and for extinguiſhing the Hopes of the pretended Prince of* Wales, *and all other Pretenders, and their open and ſecret Abettors, and for declaring the Aſſociation to be uſeleſs, and for appointing other Words in their Room.* See theſe two Acts, 1 *W.* & *M.* and 13 & 14 *W.* 3. at large, what Perſons and Officers are bound thereby.

A **See** alſo an Act made 1 *Annæ*, *cap.* 22. intituled, *An Act to declare the Alterations in the Oath appointed to be taken by the Act*, intituled, *An Act for the further Security of his Majeſty's Perſon, and the Succeſſion of the Crown in the Proteſtant Line, and for extinguiſhing the Hopes of the pretended Prince of* Wales, *and all other Pretenders, and their open and ſecret Abettors, and for declaring the Aſſociation to be determined.*

Another Act to declare Alterations of the Oaths appointed to be taken in a former Act.

B **See** the Oath of the Tryers of Jurors on a Challenge for Favour, *&c.* *Salk.* 152.

Oath of the Jurors on a Challenge.

C **Oath** made *de veritate præmiſſorum* is ſufficient in Convictions. *Ibid.* 369.

Convictions.

D **Concerning** the taking of Oaths to qualify for Offices in Corporations. *Ibid.* 428, 429.

Oaths to qualify.

E **Where** a Peer ſhall depoſe on his Oath or his Honour. *Ibid.* 512, 13.

Peer.

F **Of** an Affidavit of the Time when a Declaration was delivered. *Ibid.* 670.

Declaration.

G **If** one robbed refuſes to take the Oath, he can't ſue the Hundred. *Ibid.* 613.

Of a Perſon robbed.

H **On** Submiſſion to a Fine after confeſſing an Indictment, Affidavits may be read to prove the Proſecutor aſſaulted firſt, *contra*, after a Conviction. *Ibid.* 55.

When an Affidavit may be read.

I **Affidavits** taken before Commiſſion by 29 *Car.* 2. *cap.* 5. muſt be in a Cauſe in Court. *Ibid.* 461.

Before Commiſſions.

K **Where** Affidavits of Perſons pillory'd may be read. *Ibid.*

Perſons pillory'd.

L **Where** on ſhewing Cauſe a new Affidavit may be read to ſupport a Rule. *Ibid.*

New Affidavits.

M **Fellows** of a College *quatenus* Fellows ought to take the Oath in their Colleges, according to the Statute of 1 *W.* & *M.* and not elſewhere. *Skinner.* 397.

Fellows of a College.

N **Whether** a Cenſor of the College of Phyſicians is ſuch an Officer as is obliged to take the Oaths to the Government. *Carthew* 478.

Cenſor of a College.

O **If** an Oath be taken voluntary, if broken the Party is puniſhable in the Court of King's Bench. 3 *Salk.*

Voluntary.

P **Where** a Negative Oath ſhall be preferred to an Affirmative. *Mod. Caſes in Law and Equity* 81.

Negative.

Q **Of** taking the Oaths, *&c.* by Virtue of the Statute 1 *Geo.* 1. *cap.* 1. *Ibid.* 45.

Oath.

Obligation.

See Bonds.
Condition.
Debt.
Writs.

Obligation, what.

A **AN Obligation is a Deed, whereby a Man obliges himſelf, under his Hand and Seal, to do and perform ſome Act.** A

Bond cannot be delivered as an Eſcrow to the Obligee, but may to another.

An Obligation cannot be delivered as an Eſcrow unto the Obligee himſelf; but it may be delivered to another to the Uſe of the Obligee as an Eſcrow: *Trin.* 24 *Car. B. R.* For the very Delivery of it to the Obligee himſelf, and his receiving it, makes it work as a Deed in the very Inſtant of the Delivery of it, according to the Effect of the Deed; but being delivered to another to the Uſe of the Obligee, it cannot operate ſo, becauſe he is no Party to the Deed, nor can take any Thing by it, but doth only take it as an Eſcrow, and as an Inſtrument to deliver it to the Obligee at ſuch Time, and in ſuch Manner, as was at the Time of ſealing thereof agreed upon. See Title **Delivery.** B

Bond to one to be paid to another is void.

If one be bound unto *J. S.* in an Obligation of twenty Pounds, and in the Obligation it ſelf it is thus, To be paid unto *J. D.* this Obligation is not good: *Trin.* 24 *Car. B. R.* For to *J. S.* it cannot be good, for the Obligor is not bound to pay him the twenty Pounds, in which he is bound, for the *ſolvendum* is to *J. D.* and to *J. D.* it cannot be good: For if he pay him not the twenty Pounds he cannot ſue for it; for the Obligor is not bound unto him by the Obligation, and ſo the Obligation is void to all Intents; and where a Deed can have no Operation in Law, it is utterly void, and it is as if no ſuch Deed had been made. *Sed Qu.* For I ſee no Reaſon why it ſhould not be a good Bond; it is a common Thing in Covenant: Or if it had been in the Condition of the Bond to pay Money to a Stranger, there had been no Doubt in the Caſe. C

A **If** a Bond be to *A.* to the Uſe of *B.* *B.* cannot ſue or releaſe this Bond. 1 *Lev.* 235.

Bond to *A.* to the Uſe of *B.* *B.* cannot ſue.

B **If** an Obligation be ſealed by *A.* and *B.* and afterwards the Name of *C.* another Obligor is interlined, and he by Conſent of all ſeals the Bond, it is good againſt all. 2 *Lev.* 35.

A. and *B.* ſeal a Bond: Afterwards *C.* is interlined and ſeals; it is good againſt all.

C **If** three be bound jointly and ſeverally, and the Seal of one is taken away, the whole is void. 2 *Lev.* 220.

If the Seal of one of the Obligors be taken away, the Bond is void.

D **If** Money be not paid according to the Condition of an Obligation, the Obligation doth thereby become a ſingle Obligation; that is, it ſhall be taken as an Obligation without a Condition: For the Benefit of the Condition, which the Obligor might have taken Advantage of, by the Payment of the Money according to the Condition, is loſt by the not paying of it, and ſo it is deſtroyed, and the Obligation reſts in Force, as if it had no Condition annexed to it. *Mich.* 24 *Car. B. R.*

The Obligation is ſingle, if the Money be not paid according to the Condition.

E **An** Obligation is a good Obligation, although it do want a Date: *Hill.* 1649. *B. S.* 8 *Feb.* For the Date is not of the Eſſence of the Deed, but the Sealing and Delivery of it; for if the Sealing and Delivery of it be proved, altho' the Time preciſely of the doing it cannot be proved, yet it is a good Deed.

Bond is good without a Date.

F **A Bond** was entered into, *de Viginti & quadrants libris*, for Payment of twenty Pounds twelve Shillings; alſo it had an impoſſible Date: It was argued on both Sides upon a ſpecial Verdict, upon *Non eſt Factum*, but I cannot find any Judgment in it. See the Caſe 5 *Mod.* 281, 282, 283, 284, 285.

Quadrants for *quadraginta.* Impoſſible Date.

G **Where** the Condition is nonſenſical and void, the Obligation is become void, and without Condition. 2 *Bulſtr.* 133.

Where the Condition is void, the Bond is become ſingle.

H **Debt** upon a Bond dated at *A.* the Declaration ſuppoſes it to be made at *A.* in *Suffolk*; the Defendant ſays, That *A.* is in *Ireland*, and that there is not any ſuch Place or Vill as *A.* in *England*. And upon a Demurrer held, That although it bears Date at any Place beyond Sea, yet the Plaintiff may for Trial alledge it to be made in *England*. *Cro. Jac.* 76. *pl.* 5.

An Action upon a Bond dated beyond-ſea, may be laid any where in *England.*

I **Two** bound themſelves, or any of them, their Heirs, Executors, or either of their Heirs, *&c.* Whether this was joint or ſeveral? And held, That it is at the Pleaſure of the Obligee to ſue them jointly or ſeverally; and *Et* and *Vel* here are all one. *Cro. Jac.* 322. *pl.* 5.

Two bound themſelves, or any of them, this is either joint or ſeveral, at the Pleaſure of the Obligee.

A Bond entred into by the Name of *Edward* and his Name was *Edmund*, and the Action brought againſt *Edmund*, and naught.

A The Bond was entered into by the Name of *Edward*, and his Name was *Edmund*, and he ſubſcribed it *Edmund*; upon *Non eſt factum*, and Verdict for the Plaintiff, he could not have Judgment: But the Court ſaid, That he ought to have brought his Action according to the Bond: And Judgment for the Defendant. *Cro. Jac.* 640. *pl.* 4.

Where two are bound and a Judgment is had againſt one, who is ſuffered to eſcape; the other is ſued and pleads this, and no Plea.

B Two are bound in a Bond: Judgment and Execution is had againſt one, whereupon he is taken, and the Sheriff ſuffers him to eſcape; the other is ſued, and pleads this Matter; and adjudged no Plea, becauſe Execution againſt one without Satisfaction is no Bar, but he may ſue the other: And altho' by this Eſcape the Plaintiff may have his Action againſt the Sheriff, yet that ſhall not deprive him of his Remedy againſt the other Obligor. *Cro. Car.* 75. *pl.* 4. *Cro. Jac.* 531. *pl.* 14, 532.

One may not be a Witneſs to prove a Bond taken in another's Name.

C One ought not to be admitted to be a Witneſs to prove an Obligation, or other Deed, which he takes in the Name of another: 21 *Car.* 1. *B. R.* For if he might be ſo admitted, this would be upon the Matter to ſuffer him to be a Witneſs to prove a Bond or Deed made to himſelf, which is not reaſonable; for every Man is ſuppoſed to be partial to himſelf.

If Defendant gives Bond to the Sheriff, and do not appear, the Plaintiff may, with the Sheriff's Leave, ſue that Bond; or may proceed by Amercements upon the Sheriff.

D If a Sheriff take a Bond of the Defendant for his Appearance to the Action upon which he is arreſted by him at the Plaintiff's Suit, and the Defendant doth not appear according to the Condition of the Bond, the Plaintiff may, by the Leave of the Sheriff, ſue this Bond in the Sheriff's Name, and proceed to Judgment upon it againſt the Defendant; but without his Leave it cannot be done: But it is at the Election of the Plaintiff to ſue this Bond or not; for he may proceed if he pleaſe by Amercements upon the Sheriff, until he make a Return of the Writ directed unto him: *Hill.* 22 *Car.* 1. *B. R.* For the Bond is only to ſave the Sheriff harmleſs againſt what may befal him, if the Defendant do not appear, and doth no way concern the Plaintiff, but by Agreement made afterwards betwixt the Plaintiff and him, of which the Court doth not take Notice, except they be moved in it; but the Sheriff oftentimes aſſigns over the Bond to the Plaintiff, to be ſued by him.

Bond expounded by the Condition.

E If there be a Bond, and it ſays not to whom the Party is bound, it ſhall be expounded by the Condition. 3 *Lev.* 21, 137.

Bond for Appearance impoſſible, is ſingle.

F If a Bond be to the Sheriff for Appearance impoſſible, the Bond is ſingle; but if the Defendant had pleaded the Statute of Sheriff's Bonds, it had been void by the Statute. 3 *Leon.* 74, 75.

A **A Bond** taken by the Sheriff contrary to the Stat. of *H.* 6. for the Defendant's Appearance, is void.

Bond taken by Sheriff contrary to the Statute of *H.* 6. is void.

B **In** Debt upon a Bond to perform all the Covenants in an Indenture; the Defendant pleads, that there are not any Covenants; to which the Court ſaid, that then the Bond was ſingle. 1 *Lev.* 3, 45.

Bond to perform Covenants, if no Covenants, the Bond is ſingle.

C **The** Condition was to pay, and if he did not pay, then the Bond to be void. This Condition was adjudged void and repugnant. *Ibid.* 77.

Condition to pay, and if he did not pay, the Bond to be void: The Condition is repugnant.

D **An** Action of Covenant will lie upon a Bond, for it proves an Agreement. *Chanc. Rep.* 294.

Covenant lies upon a Bond.

E **In** ancient Time, as ſoon as Judgment was recovered upon a Bond, it was damned, becauſe the Duty was changed into another Nature: But now of late there are ſo many Writs of Error brought, and Tricks uſed, that the Court will not ſuffer a Bond to be cancelled: But upon a Reverſal of a Judgment, a new Action may be brought upon it. 6 *Rep.* 45. *b.* 46. *a.*

Formerly Bonds were damned, as ſoon as Judgment was recovered. Not ſo now.

F **A Bond** is, *Obligamus nos & quemlibet noſtrum Conjunctim:* This is a good Bond, and expounded by the Word *Conjunctim.* 3 *Leon.* Caſe 274.

Quemlibet noſtrum Conjunctim, makes a joint Bond.

G **A Bond** was *teneri in ſeptuagent. & quinquagint. libris*, conditioned to pay 500 *l.* the Action was brought for *ſeptingenta & quinquaginta libris*, and ruled to be good. *Cro. Eliz.* 896. *pl.* 17.

Septuagenta for *Septingenta*, and yet good.

H **Declaration** upon a Bond of *quingentis libris*, and the Bond ſhewn was *quemquegent. libris*, and adjudg'd for the Defendant. *Cro. Jac.* 146. *pl.* 5.

Quemquegentis for *quingentis.*

I **A Man** binds himſelf to *J. S.* to pay him ſuch Money as his Brother owes him; and underneath was written, that *A.* the Brother of *K.* owed *J. S.* 40 *l.* and the Plaintiff avers, that he then owed him 40 *l.* And held, that the Action well lies; and that a Deed may refer to a collateral Matter, as a Bond to peform Covenants. *Cro. Jac.* 561. *pl.* 20.

A. bound to pay *B.* as much Money as *C.* owed him: How to be.

K **When** a Man is to enter into a Bond for the Payment of a Sum of Money, no Sum being mentioned, ſhall be intended a Bond of double the Sum. *Cro. Jac.* 116. *pl.* 3.

A Bond to be entered into for Payment of Money, muſt be of double the Sum.

L **Debt** was brought for 600 *l.* and upon *Oyer* it was *Sexaginta*, and upon a Demurrer the Bill was abated. *Cro. Jac.* 190. *pl.* 15.

Sexaginta for *Sexcenta*, naught.

M **Debt** for 6 *l.* 13 *s.* 4 *d.* and the Bond was upon *Oyer in Viginti Nobulis*, and held good. *Cro. Jac.* 203. *pl.* 4.

Viginti Nobulis, good.

N **A Bond** was entered into, *in Viginti litteris*, and held to be void. *Ibid.*

Viginti litteris, void.

O **An** *Italian* Bond *in Seſſanta* for *Sexaginta*, and good. *Comb.* 478.

In Seſſanta.

P **In** *Quinquageſſimis* for *Quinquaginta*, and held good. *Cro. Jac.* 290. *pl.* 8.

In quinquageſſimis.

Trigintate.

Trigintate for *Triginta*, and held good upon a Demurrer. *Cro. Jac.* 209. *pl.* 17. *Cro. Jac.* 355. *pl.* 10. A

Obligamus nos & utramque noſtrum.

The Bond there is joint and ſeveral. *Cro. Jac.* 522. *pl.* 5. B

Sexinginta.

Sexinginta for *Sexaginta*, after Demurrer, held that the Bond was good, and the Words all one in Intendment. *Cro. Jac.* 338. *pl.* 2. C

Teregentate libris.

Teregentate was held to be inſenſible, and a void Bond. *Cro. Jac.* 603. *pl.* 28. D

Threty Ponds.

Threty Ponds for thirty Pounds upon *Oyer* and Demurrer, adjudged for the Plaintiff. *Cro. Jac.* 607. *pl.* 2. E

Tredecem.

Tredecem ſhall be taken thirteen. *Cro. Car.* 386. *pl.* 18. F

Quinginta.

The Plaintiff declares for *Quinquaginta libris*, and upon *Non eſt factum* the Bond was found to be *Quinginta*, and held to be good. *Cro. Car.* 416. *pl.* 4. G

Where an Obligation once forfeited, cannot be ſaved.

An Obligation once forfeited, cannot be ſaved by any Act or Releaſe made or done to a Stranger. 3 *Leon.* Caſe 65. H

Where Debt may be brought upon a foreign Bond.

An Action may be brought here or in the Admiralty-Court upon a foreign Bond: And the Reaſon why it may be brought in the Admiralty-Court, is, becauſe if the Witneſſes live beyond-ſea, it may be examined there. 3 *Leon.* Caſe 314. I

Oath muſt be to the Loſs of a Bond, to intitle the Chancery to Juriſdiction.

Oath muſt be made of the Loſs of a Bond, to intitle the Chancery to Juriſdiction, elſe the Party is intituled at Law. *Chanc. Rep.* 231. See Title **Chancery.** K

Inſenſible Words.

Inſenſible Words in the Sum of an Obligation, may be explained by the Condition; as *ſex triginta Libris*, or *Quadrans Libris*. Salk. 462. L

Bond ſingle.

A Condition of a Bond (reciting a Debt) not to pay, is repugnant, and the Bond ſtands ſingle. *Ibid.* 463. M

Variance in the Name.

Bond made by *Erlin*, and ſubſcribed *Erlwin*, is no material Variance. *Ibid.* 462. N

What no Defeazance.

A Bond from *A.* and *B.* to *H.* joint and ſeveral, a Covenant from *H.* not to ſue *A.* is no Defeazance. *Ibid.* 575. O

A Bond by a Deputy, where good.

A Bond by a Deputy to pay a certain Sum out of his Sallary or Profit, is good. *Ibid.* 466, 468. P

Where void.

But where it is without Relation to the Sallary or Profits, 'tis void. *Ibid.* Q

What Right amounts to an Obligation. *Comberb.* 87. R

A **Of** Arbitration Bonds, *vide Comberb.* 100, 103. Of Bail Bonds, *Comberb.* 357. Of Bonds to perform Covenants, *Comberb.* 106, 377. Of Bonds in reſtraint of Trade, *Comberb.* 121. Bonds *in treceſſimo ſecundo libris, Comberb.* 60. Or *Sexageſimo libr', Ibid.* Or *quadrigint' liber, Comberb.* 86. Or *Sex trigint' liber. Comberb.* 187. Or *Octagint* for *Qctogint, Comberb.* 226. Or *Quadrans* for *Quadragint, Comberb.* 477. are good Bonds notwithſtanding the falſe *Latin, &c.*

Inſenſible Words.

B **Where** one by Writing under Hand and Seal, appoints a Steward to retain 104 *l.* out of the firſt Money he ſhall receive. *Quære*, if Debt lies thereon as on a Bond. *Comberb.* 87.

If Debt lies.

C *Noverint, &c.* obliged *A. B. in Com' præd' Midd. Vigint' quadrans liber' dat' Anno Regni B. R. Car.* 2. 1674. with a Condition for Payment of 20 *l.* 12 *s.* adjudged a good Bond for 40 *l.* and the Date being impoſſible, any Date may be alledged. *Comberb.* 477.

Impoſſible Date.

D **Note**, A Bond may be good, though to perform void Articles, *&c. Comberb.* 242.

To perform void Articles.

Occupant and Occupancy.

E **There** can be no Occupancy by any Perſon, of any Thing which another hath a preſent Right to poſſeſs. *Vaugh.* 189.

Of what there cannot be an Occupancy.

F **Occupancy** by Law muſt be of Things which have natural Exiſtence, as of Land, *&c.* not of Things which had their Beings from Laws and Agreements of Men; as Rent, Common, Advowſon, Fair, Market, Tithes, *&c.* or any Thing that lies in Grant, and cannot paſs without a Deed; for every Occupant muſt claim by a *que Eſtate*, and aver the Life of *Ceſtuy que vie. Vaugh.* 190.

Of what Things it may be, and of what not.

How to be claimed.

G **None** ſhall be an Occupant but he that is in actual Poſſeſſion. 3 *Leon.* Caſe 61. *fol.* 36.

Who ſhall be an Occupant.

H **There** can be no Occupancy of a Copyhold Eſtate, becauſe there cannot be a Tenant of a Copyhold by Surrender and Admittance. *Modern* Caſes 66.

No Occupancy of a Copyhold Eſtate, and why.

To every Occupant of Land, two Things are neceſſary:

What Things are neceſſary to make an Occupancy.

I. Poſſeſſion of the Land, which was void, and A without an Owner.

II. The having of the Freehold to avoid an Abeiance. *Vaugh.* 191. B

Muſt be of a void Poſſeſſion.

A bare Entry will not do.

A Man cannot be an Occupant but of a void C Poſſeſſion, or of a Poſſeſſion of his own; an Entry or Claim will not do it. *Vaugh.* 192. See *Carter* 65, 66, *&c.*

There are two Sorts of Occupancy:

Two Sorts of Occupancy.

I. **Where** there is *Poſſeſſio vacua*, as when Tenant *pur auter Vie* dies. *Carter* 65. D

II. **Where** there is no *Poſſeſſio vacua*, as where Tenant *pur auter Vie* makes a Leaſe for Years. *Ibid.* E

Who is Occupant *Nolens Volens.*

Tenant *pur auter Vie* makes a Leaſe for Years, F and dies; the Leſſee for Years is occupant *Nolens volens. Ibid.*

What Poſſeſſion will maintain an Occupancy.

It is not every Poſſeſſion that will make an Occupancy; but it muſt be ſuch an one as will maintain Treſpaſs, without any farther Entry. *Ibid.* See for **Occupancy.** 2 *Keb.* 250. *pl.* 29. 285. *pl.* 58. G

How Occupancy is now ſettled, by the Statute of *Frauds and Perjuries.*

29 **Car. 2. cap.** 3.

After ſeveral Controverſies which formerly happened about Occupancy, came the Statute of *Frauds*, 29 *Car.* 2. *cap.* 3. and enacted, That any Eſtate *pur auter Vie* ſhall be deviſable by Will in Writing, ſigned by the Party ſo deviſing the ſame, or by ſome Perſon in his Preſence, and by his expreſs Directions, atteſted and ſubſcribed in the Preſence of the Deviſor by three or more credible Witneſſes: And if no ſuch Deviſe thereof be made, the ſame ſhall be chargeable in the Hands of the Heir, if it ſhall come to him by Reaſon of a ſpecial Occupancy, as Aſſets by Diſcent, as in Caſe of Lands in Fee-ſimple: And in Caſe there be no ſpecial Occupant thereof, it ſhall go to the Executors or Adminiſtrators of the Party that had the Eſtate thereof by Virtue of the Grant, and ſhall be Aſſets in their Hands. H

Heir at Law.

The Heir ſhall be charged in the Caſe of a ſpecial Occupancy with Payment of Debts, not Legacies. *Salk.* 464. I

Adminiſtrators.

An Adminiſtrator ſhall be charged in like Manner, when the Heir is a ſpecial Occupant. *Ibid.* 465. K

Freehold, in whom it veſts.

A Freehold veſts in a ſpecial Occupant by Diſcent, without Entry or Claim. *Comberb.* 290. L

Office and Officer.

See { Fees. Indictment. King. } { Oath. Plea and Pleadings.

A **The** Chief Cryer of this Court hath his Office by Patent from the King; and this Office may be granted in Reverſion: *Paſch.* 23 *Car.* *B. R.* For this is the King's own proper Court, where himſelf uſed to ſit in Perſon, and it is for his Honour to have ſuch Officer by Patent; and it may be granted in Reverſion, becauſe it is but a miniſterial Place.

Office of Cryer of *B. R.* is a Patent Office, and may be granted in Reverſion.

B **An** Officer of the Court is ſuppoſed, and ought to be every Day in Court: 1 *Lev.* 2 See *eund.* 64.

Officer of the Court ſuppoſed to be daily there.

C **As** to an Officer of the Court charged with a Fault, which he could not hinder: And,

Officer charged with a Fault he could not hinder.

D **That** a Judicial Office may be executed by a Deputy. *Ibid.* 76.

Judicial Office may be executed by Deputy.

E **If** an Officer for Life commit a Forfeiture, he in Reverſion ſhall have the Advantage of it. *Ibid.* 2. *Lev.* 71. See *eund.* 150. and 3 *Lev.* 245, 288.

If Officer for Life commits a Forfeiture, he in Reverſion ſhall have the Advantage.

F **Who** may go into the Office of *Cuſtos Brevium & Rotulor.* *in B. R.* See *Raym.* 53.

Who may be in the Office of *Cuſtos Brevium.*

G **That** the King may grant an Office forfeited before any Office found. 3 *Lev.* 200.

The King may grant an Office forfeited, before Office found.

H **If** an Archdeacon grant the Office of Regiſter for Money, the Office is forfeited to the King, and not to the Biſhop. *Ibid.* 289.

Office of Regiſter granted for Money, is forfeited to the King.

I **Forfeiture** given generally by the Statute, the Forfeiture belongs to the King. *Ibid.* 290.

Forfeitures given generally by Statute belong to the King.

Preſcription in an Office to be exerciſed by four Perſons to be named by the King, good.

Preſcription in an Office to be exerciſed by four Perſons, to be named by the King from Time to Time, good. 1 *Lut.* 381. A

Aſſurance Office cannot enſure the Life of a Man who has an Office for Life.

The Office of Aſſurance cannot enſure the Life of one that hath an Office for his Life, as it may do the Life of one that is at Sea, or beyond Seas, and employed in Merchants Affairs: *Mich.* 1649. *B. S.* For they have no Power to enſure the Life of any, but in caſe of Merchants Affairs, by the Statute which gave them their Power, which is the Statute of 43 *Eliz.* B

Offices of Truſt muſt be executed perſonally, unleſs otherwiſe granted; and cannot be aſſign'd.

All Offices of Truſt muſt be perſonally occupied, unleſs granted to be occupied by a Deputy; but Offices of perſonal Truſt cannot be aſſigned, for the Truſt (which any Man may have) is not perſonal. *Vaugh.* 181. C

The Statute againſt Buying and Selling of Offices. 5 & 6 E. 6. cap. 16.

Whoſoever ſhall ſell any Office or Deputation of any Office, which concerns the Adminiſtration or Execution of Juſtice, or any Clerkſhip in any Court of Record, wherein Juſtice is to be adminiſtred; or in any of his Majeſty's Cuſtoms (and ſeveral other Offices therein mentioned, belonging to the Crown) that the Seller ſhall not only loſe all his Right and Intereſt in and to the Offices; but the Buyer ſhall be diſabled from holding the ſame. D

This ſhall not extend to the two Chief Juſtices, or the Juſtices of Aſſize. E

How the great Officers, and Lords in Parliament, ſhall be placed. 31 H. 8. cap. 10.

How the Great Officers, and Lords in Parliament, ſhall be placed. 31 *H.* 8. *cap.* 10. F

The Act of 9 *Ann.* gives One hundred Pounds againſt the Officer who preſides at the Election of Members to ſit in Parliament, and continues in his Place and obſtructs the Election of another.

By an Act of Parliament made 9 *Annæ*, it is enacted, That no Mayor, Bailiff, or other Officer, who preſides at Elections, and returns Members to Parliament, ſhall be capable to be choſen in the ſame Office for the Year immediately enſuing, and when ſuch Officer is to continue for a Year, and until another Perſon be choſen and ſworn into ſuch Office; if any ſuch Officer ſhall voluntarily and unlawfully obſtruct and prevent the chooſing of another Perſon to ſucceed in ſuch Office, at the Time appointed for the making of another Choice, he ſhall forfeit one hundred Pounds for every ſuch Offence, with Coſts of Suit, one Moiety to the Queen, and the other to him who will ſue for the ſame. G

The Statute extends as well to the Offices in the Eccleſiaſtical Courts, as to the Offices in the Common Law Courts, 5 Ed. 6. cap. 16.

All the Offices in the Eccleſiaſtical Courts, are as well Offices intended within the Statute of 5 *Ed.* 6. *cap.* 16. which reſtrains the buying of Offices, as any other Offices in the Courts of Common Law. *Cro. Jac.* 269. *pl.* 1. H

A **An** Officer for Life accepts of another Grant of the ſame Office to him and another: This is not any Surrender of the firſt Grant. *Cro. Car.* 259.

An Officer for Life accepts of another Grant thereof to him and another; this is no Surrender of the firſt Grant.

B **The** Office of Officialty of the Archdeacon of *Leiceſter*, and the Office of Commiſſary of the Biſhop of *Lincoln*, are antient Offices, and were always granted to one Perſon: And a Grant of thoſe Offices to two, where they were only grantable for one Life, is a void Grant, by the Statute, againſt the Succeſſors. *Cro. Car.* 248. *pl.* 2. 249.

A Grant of an Office for Life to two, which uſed to be granted but to one, is a void Grant.

C **Actions** brought againſt Conſtables, or other Officers of Juſtice, for a Thing done by Virtue of their Office, ought by the Statute of 21 *Jac. cap.* 12. to be brought in the County where he is Conſtable or Officer, and not elſewhere; to which they may plead the General Iſſue, and give the Special Matter in Evidence: And if the Plaintiff be nonſuited, or a Verdict for the Defendant, he ſhall have double Coſts; becauſe Publick Miniſters of Juſtice are favoured in Law. And though by Law they are reſponſible for Miſdemeanors in their Offices; yet the Law provides, That they be not put to greater Trouble than need for their neceſſary Defence.

Where Actions ſhall be brought againſt Juſtices, Conſtables, *&c.* for Matters done in their Offices. 21 Jac. cap. 12.

To plead the General Iſſue.

And have double Coſts.

D **This** Statute of 21 *Jac.* 1. *cap.* 12. doth not extend to Eccleſiaſtical Officers, but only to temporal Matters, as to the giving of double Coſts. *Cro. Car.* 284.

This Statute doth not extend to give double Coſts to Eccleſiaſtical Officers.

21 Jac. 1. cap. 12.

E **An** Officer is not guilty, though the Proceſs is erroneous. *Lutw.* 1562.

Erroneous Proceſs doth not make an Officer guilty.

F **How** to plead where the Action is brought againſt the Officer, Judge, and Plaintiff, in an inferior Court, ſuppoſing the Matter to riſe *extra Juriſdictionem: Lutw.* 937. 1560. But where the Actions will lie, ſee 1566, 1567, to 1569.

How to plead where the Action is brought againſt the Judge, Officer, *&c.* in an Inferior Court.

G **An** Officer of the Admiralty juſtifies by Warrant from the Court, without ſhewing it to be *infra Juriſdictionem Curiæ.* It is good for the Officer. 2 *Lev.* 131.

What is a good Juſtification for an Officer.

H **A Judicial** Office is granted to two, *& alteri eorum conjunctim & diviſim* for their Lives, *& eorum alterius diutius viventis*, is good; and when one dies, they make but one Officer; and till another is made, the Survivor's Vote is ſuſpended: As where two Sheriffs, one dies, the other cannot act till another is made. 11 *Rep.* 3, 4. *b.*

One Judicial Officer dies, the other cannot act till another is made.

Grant of a Judicial Office in Reverſion is void.

A **A Grant** of a Judicial Office in Reverſion is void. So it is if it be part Miniſterial, part Judicial. *Ibid.* 4. *a.*

Office of Truſt granted to two: Where Death of one makes it void, and where not.

B **Where** an Office of Truſt is granted to two for their Lives; by the Death of one the Grant is become void: But if it were *& eorum diutius viventis*, it is not; for there the Survivor ſhall be the Perſon to whom another ſhall be added. 11 *Rep.* 3. *a. b.* 4. *a.*

Aſſumpſit lies for the Profits of an Office.

C *Aſſumpſit* lies for the Profits of an Office againſt one who hath no Title, 2 *Lev.* 245.

Where a Man preſcribes to an Office, he ought to ſay *antiquum Officium.*

D **Where** a Man preſcribes to an Office, and the Profits thereof, he ought to ſhew it to be *antiquum Officium. Cro. Jac.* 605.

Debt will lie for a Fee to an antient Office.

E **A Fee** may belong to an antient Office, and Debt will lie for it. *Lutw.* 381.

How an Officer that executes the Proceſs of the Court, ſhall juſtify in an Action againſt him.

F **Where** an Action is brought againſt an Officer, or his Aſſiſtant, for executing of a *Capias ad Satisfaciendum*, he need not ſet forth the Judgment, but only the Writ and Warrant; becauſe he is an Officer of the Court to execute the Proceſs of the Court: And if the Proceſs be erroneous, or there is no Judgment to ground the Proceſs upon, yet the Officer ſhall not ſuffer, for he doth but his Duty to obey the Court, who will protect him. But if the Action be brought againſt the Plaintiff in the Execution, he muſt plead his Judgment. *Hill.* 5 *W. & M. B. R.*

The Officer ſhall be excuſed, tho' the Plaintiff is liable.

G **Where** a Judgment is illegally entered, and afterwards Execution is ſued out thereupon and executed, the Officers who execute it are excuſed; but the Plaintiff is liable: For the Officers are in no Fault; they do but obey the Proceſs of the Court.

County-Clerks Office cannot be granted by the King.

H **The** Office of Clerk of the County-Court granted by the King, is a void Grant, 4 *Rep.* 32. *b.* to 34.

How to plead an Office. Where to ſay *Antiquum Officium:* And where to preſcribe.

I **Where** a Man pleads to the Right of an Office, it is not good to ſay, *Antiquum Officium*; but he ought to preſcribe in it: But where any Thing is claimed pertinent to an Office, it is ſufficient to ſay, *Antiquum Officium.* 10 *Rep.* 59. *b.*

A Grant of an Office, *Quamdiu ſe bene geſſerit*, is for Life.

K **If** a Man have an Office granted to him, to enjoy ſo long as he ſhall behave himſelf well in it; he hath an Eſtate for Life in the Office. *Show. Rep.* 523, 525, 531, 536. It is ſo alſo in the Caſe of the King.

How an Office may be granted by a common Perſon in Reverſion, after a Life in being.

L **A Reverſion** of an Office cannot be granted by a common Perſon as a Reverſion, and by the Name of a Reverſion: For there is no Reverſion of an Office, unleſs it be an Office of Inheritance; but it may

may be granted, *Habendum* after the Death of the Grantee for Life. *Cro. Car.* 279. *pl.* 19. 555. *pl.* 11. 556.

A **The** Office of a Biſhop's Regiſter granted in Reverſion, to an Infant for Life. *Habend.* after the Death of the Officer in Being, (ſuch Grant in Reverſion having been uſually made) it was held to be good. *Cro. Car.* 279. *pl.* 19. 555. *pl.* 11. 556, 557.

A Grant of a Biſhop's Regiſter to an Infant, *Habend.* after the Death of the Officer in Being, is good.

B **The** Office of Marſhal of the King's Bench is an Office of great Truſt, and cannot be granted for Years, for the Inconvenience of Executors, Adminiſtrators, Infants, Feme-Coverts, *&c.* *Cro. Car.* 587. *pl.* 1.

The Office of Marſhal, not grantable for Years.

C **Non-attendance** of the Officer of Searcher of the Port of *Sandwich*, for two Months, was found to be a Forfeiture of his Office. *Ibid.* 491. *pl.* 16.

Where Non-attendance ſhall be a Forfeiture of an Office.

D **A Judicial** Office may be granted to two, but if one dies it does not ſurvive, unleſs it is ſaid to the Survivor in the Grant. *Salk.* 465.

Judicial Office.

E **The** King grants an Office to *A.* *durante bene placito*, and after grants it to *B.* to commence after the Death, Surrender or Forfeiture of *A.* the latter Grant is good. *Ibid.*

Durante bene placito.

F **An** Office granted at Will is at the Will of the King and not of the Party, and may be ſurrender'd. *Salk.* 466.

At Will of the King.

G **The** King's Tenant at Will may forfeit, but there muſt be an *Inquiſition.* *Ibid.*

Tenant at Will.

H **Non-attendance** is a good Cauſe of Forfeiture of the Office of *Recorder.* *Ibid.* 435.

Recorder.

I **Of** removing Officers at Will in Corporations. *Vide* Title **Mandamus.** *Salk.* 428.

Removal of Officers.

K **A Freehold** to commence *in futuro* may be in a Rent *de novo*, or in an Office. *Salk.* 466.

In futuro.

L **A Bond** by a Deputy to pay half the Profits of the Office, or a certain Sum out of the Sallary, *&c.* is good. *Ibid.* and 468.

Bond good.

M **Earl** Marſhal of *England* was formerly Marſhal of *B. R.* and the Office of Chamberlain of the Priſon, is incident to that of Marſhal. *Ibid.* 439.

Marſhal of *B. R.*

N **The** *Cuſtos Rotulorum* may appoint the Clerk of the Peace without Deed. *Ibid.* 467, 479.

Clerk of the Peace.

O **Concerning** the Office of Clerk of Aſſize, *Salk.* 670, 671. and Clerk of the Market. *Salk.* 327.

Clerk of Aſſize.

P **A Pariſh-Clark** nominated by the Parſon, is in for Life, *&c.* *Salk.* 536.

Pariſh-Clark.

Q **And** Caſe lies for diſturbing him in the Execution of his Office. *Ibid.* 468.

Mayor.

The Mayor is the Head Officer of the Corporation. *Salk.* 398, 482. A

Forfeiture.

He who has an Eſtate for Life in an Office, is the Officer againſt whom the Forfeiture ſhall run. *Skin.* 114. B

Of Record, who is the Officer.

It ought to be of Record in the Court who is the Officer, that the Parties grieved may know againſt whom to bring their Action. *Ibid.* C

Title for the King.

Where upon an Offence found, a Title appears for the King, but it is not found in what Degree, there the beſt ſhall be taken for the King. *Ibid.* 178. D

Letters Patent.

Between the Return of an Office, and the Grant of Letters Patent, there ought to be a Month, *per* Statute of 18 *Hen.* 6. that the Parties might come and tender a Traverſe. *Ibid.* E

Action againſt Sheriff's Officers.

Officers of the Sheriff, Treſpaſs will not lie againſt them for replevying Goods, unleſs the Party claim a Property at that Time. *Carthew* 381. F

A Feme Officer.

Where it may be executed by a Woman by Deputy. 3 *Salk.* 2. G

Reverſion.

Where it cannot be granted in Reverſion. *Ibid.* 250. H

Marſhal of *B. R.*

Office of Marſhal of *B. R.* cannot be granted for a Term of Years. *Ibid.* 251. I

5 Ed. 6.

Where Grants of Offices are void by the Statute 5 *Ed.* 6. and where not. *Ibid.* K

Removal of Offices.

See divers Caſes of Removal from Offices in Corporation before Conviction. *Mod. Caſes in Law and Equity*, 101, 102. L

Not to be choſen twice.

Note, (in Corporations, *&c.*) he who has been in an Office one Year, ſhall not be choſen into it the next. *Mod. Caſes in Law and Equity* 133. M

Office for the King, See **King.**

Orders.

A **ORders are Rules made by the Court in Cauſes there depending; and when they are drawn up and entred by the Clerk of the Rules, they become Orders of the Court.**

Orders, what.

B **This** Court may quaſh any Orders made at the publick or private Seſſions of the Peace, or made by any other Commiſſioners, if they ſee good Cauſe for it: *Mich.* 22 *Car. B. R.* For this Court is the ſuperintendent Court over all other Courts, and is to regulate their Proceedings, where they be irregular and illegal.

B. R. may quaſh any Orders made at the Seſſions of the Peace.

C **If** a Cauſe be put in the Paper of Cauſes, that it may be ſpoken unto in Matter of Law by the Order of the Court, and the Attorney in the Cauſe doth not attend the Cauſe at the Day, the Cauſe is to be put out of the Paper, and not to be put in again that Term: *Mich.* 22 *Car. B. R.* except very good Cauſe be ſhewed to the contrary.

If a Cauſe be to be ſpoken to by Order of Court, and the Attorney do not attend, it ſhall be put out of the Paper for that Term.

D **This** Court doth not take Notice of Orders made in Chancery: *Trin.* 23 *Car. B. R.* Nor in any other Court ſo as to be bound by them; but will proceed according to the Rules and Orders of this Court; and if they ſhould do otherwiſe, their Proceedings would be thereby much interrupted to the Prejudice of the People. But this ſeems not to hold in the Caſe of Injunctions from the Chancery.

B. R. takes not Notice of Orders in Chancery, except of Injunctions.

E **Tueſdays**, Thurſdays, and Saturdays, are the proper Days by the Orders of this Court to hear Matters of Law: *Mich.* 1649, *B. S.* but chiefly Saturdays; the other three Days are proper for Motions and other Buſineſſes; but this doth not always hold.

Days ordered by the Court to hear Matters of Law.

F **By** the Orders of this Court, the three laſt Days of the Term the Judges have no Paper of Cauſes, either of Records or *Conſiliums*, delivered unto them, unleſs one on the Crown Side; or in extraordinary Caſes by particular Rules made for that Purpoſe; for thoſe three Days are to hear Motions, and prepare and ſettle Buſineſs for the Aſſizes, and following Terms.

No Paper of Cauſes the three laſt Days in the Term, except on the Crown-Side.

The Conſtruction of a Bond given to indempnify a Pariſh.

A **An** Obligation with a Condition to ſave the Pariſh of *S.* harmleſs from *J. G.* his Wife and Children; *Joſeph*, the Son of *J. G.* born at the Time of the Obligation entred into, had a Wife and Children whom he could not maintain; and the Pariſh, by Order of the Juſtices, was to allow two Shillings *per* Week to *Joſeph* for the Maintenance of him and his Family. In an Action brought upon this Bond, the Condition was held to be broken, for though it did not extend to Grand-children of *J. G.* becoming chargeable, yet their Father *Joſeph*, who is by Nature bound to maintain them, being unable to do it, he is in that Reſpect impotent, and become chargeable to the Pariſh; and he is within the expreſs Words of the Condition, and held in this Caſe that all the Children of *J. G.* though born after the Obligation entred into, would be within the Words of the Condition. *Skinner* 557.

Of gaining a Settlement.

B **A Queſtion** upon the Statute of 3 *W.* & *M.* was, If a poor Perſon being taxed in the Pariſh, and not having paid, but dying before Payment or Inhabitance by the Space of forty Days had gained a Settlement, and adjudged that Taxation without Payment was not ſufficient. *Ibid.* 620.

Order of Juſtices concerning Aſſeſſments.

C **The** Juſtices charged all the Inhabitants generally to the Scavengers Rates, according to the Statute of 3 *W.* & *M.* and the Queſtion between the Inhabitants of *N.* was, Whether the Inhabitants of that part of the Pariſh which inhabited within the Country, out of the Paving, ſhould be contributary to the Aſſeſſments for the Paving: But the Order was confirmed, for the Words of the Act are general, and where the Law does not diſtinguiſh, the Court ought not. *Ibid.* 643.

Settlement.

D **One** was placed with a Barber to be inſtructed to ſhave, and make a Bob Wig for a Twelve Month, and to be found in Cloaths by the Barber, and the Barber to have what he earned: This will gain him a Settlement within the Statute of *W.* & *M.* *Ibid.* 671.

Neceſſary to ſhew Juſtices of or for the County.

E **An** Order by Juſtices reſiding in the County, not enough without ſaying of or for the County. *Salk.* 474.

By whom the Order to be made.

F **An** Order for Removal need not be by Juſtices of the Diviſion, but muſt be *Quorum unus.* *Vide Salk.* 473, 480.

Not to command Officers to remove.

G **Juſtices** can't command the Officers of the Pariſh whither it is ſent, to remove him. *Ibid.* 493.

Examination.

H **On** Orders of Removal, the Examination muſt be by both Juſtices *Quorum unus.* *Ibid.* 488, 489.

Order of Removal, ill.

I **An** Order to remove one to *B.* becauſe the Father laſt ſettled there, is ill. *Ibid.* 470.

The like.

K **So** to remove *A.* and his Family, or Wife and Family, becauſe too general. *Ibid.* 482, 485, 488.

A **So** an Order reciting, we are informed *B.* is the Place of legal Settlement, ill. *Salk.* 473.
The like.

B **Alſo** there muſt be a direct Adjudication of the Place of legal Settlement. *Ibid.* 478, 479.
Adjudication.

C **An** Order made on Complaint, that *A.* is likely to be chargeable, is not good without an Adjudication. *Ibid.* 491.
Where an Order ill.

D **And** ſuch Order muſt be made on Complaint of the Church-wardens. *Ibid.* 492, 3.
On whoſe Complaint.

E **But** it need not ſhew that he did not rent a Tenement of 10 *l. per Ann.* *Ibid.*
What not to be ſhewn.

F **An** Order of two Juſtices not appeal'd from, binds the Pariſh upon which 'tis made, 'till a new Settlement is gained. *Ibid.* 488, 89.
Whom it binds.

G **And** held an Order of two Juſtices binds againſt all Pariſhes 'till repealed. *Ibid.* 481, 524, 527.
The like.

H **Yet** an Order of Reverſal on an Appeal binds not a third Pariſh nor Party. *Ibid.* 486, 487.
The like.

I **The** Pariſh on whom an original Order is made, can't remove 'till it be reverſed. *Ibid.* 488.
When an Order to be reverſed.

K **And** the Seſſions on Appeals can't ſend to a third Place not a Party. *Ibid.* 475.
Third Place, not a Party.

L **Nor** can the Seſſions, after their firſt Order, make an Order of Review. *Vide* **Seſſions.** *Ibid.* 477.
Order of Review.

M **And** on an Appeal from an Order of Corporation Juſtices muſt be to the Seſſions of the County, not of the Corporation. *Ibid.* 490.
To whom an Appeal.

N **The** firſt Order failing, all ſubſequent Orders fall to the Ground. *Ibid.* 482.
Subſequent Orders.

O **After** an Order confirmed on an Appeal, if a Perſon goes to a Pariſh, not a Party, he muſt be removed by an Original Order. *Ibid.* 481.
Original Order.

P **Note,** an Order reverſed is final only between the Parties; but if confirm'd, or not appeal'd from, 'tis final to all the World. *Ibid.* 492, 524, 527.
When final.

Q **Juſtices** may Order the laſt Overſeers to pay their Succeſſors what Money is in their Hands. *Ibid.* 484.
Overſeers.

R **They** may order Wages to be paid generally, and the Court will intend it Huſbandry. *Ibid.* 442, 427, 484.
Wages.

S **An** Order for Maintenance of a poor Child dropp'd in Chriſt-Church Hoſpital, quaſh'd. *Ibid.* 485.
Baſtard Child.

T **Payment** of Pariſh Rates, either for Houſe or Perſon, makes a Settlement. *Ibid.* 478.
Settlement.

Notice.

Where and what Notice on other Accounts is neceſſary to make a Settlement. *Ibid.* 472, 473, 476. and *Vide* **Poor.** A

Certiorari.

On *Certiorari* the Juſtices can only return the Order *in hæc verba. Ibid.* 493. B

Return.

The Defect of an Order can't be made good by Matter alledged in the Return. *Ibid.* C

Where an Order not good.

See an Order by two Juſtices to execute another Order made by others not good. *Ibid.* 489. D

The like.

Order of Settlement, and did not ſay that it was made upon the Complaint of the Churchwardens and Overſeers of the Poor, not good, tho' it was ſaid in the Caption. *Carthew* 365. E

Where good.

Did not ſay that the Perſon was likely to be chargeable, yet good. *Ibid.* 222. F

Notice.

An Order of Settlement confirmed on an Appeal, *&c.* tho' there was no Notice in Writing. *Ibid.* 28. G

The like.

Notice muſt be actually given of coming into a Pariſh. *Ibid.* 396. H

Appeal.

The Party may appeal as well as the Pariſh. *Ibid.* 222. I

Wages.

An Order for Payment of Wages to a Day Labourer the Juſtices have no Juriſdiction; but for the Wages of Servants hired by the Year, or in Huſbandry. *Ibid.* 156. K

Settlement.

What ſhall be a Hiring to make a Settlement of a Servant, and what not. *Ibid.* 401. L

To whom to be directed.

Order of Removal directed to the Conſtable only, and not to the Overſeers, good, if executed by him. *Ibid.* 449. M

When final.

Order of Settlement confirmed on an Appeal is final only as to the contending Pariſhes, and not to any third Pariſh. *Carth.* 516. N

Who may make an original Order.

Order made by two Juſtices of *Lancaſter* to remove a Poor Man to *H.* in *Cheſhire,* who by an Order of two *Cheſhire* Juſtices was removed to *S.* in *Herefordſhire*: It was, whether the *Cheſhire* Juſtices could make ſuch original Order without an Appeal from the *Lancaſhire* Order; but this Order was informal, becauſe he did not ſet forth that the poor Man was legally ſettled at *S. Ibid.* 288. O

Settlement.

A Widow having three Children married one who was ſettled in another Pariſh, the Children ſhall not follow the Mother and be ſettled with the Father-in-Law, unleſs they were ſeven Years old, but muſt continue in the Pariſh where the Father was ſettled. *Ibid.* 279, 280, 449. P

The like.

Where a poor Man coming into a Pariſh with a Certificate ſhall gain a Settlement, and where not. *Ibid.* 346. Q

A **Where** the Parents are Vagabonds, the Birth of a Legitimate Child gains a Settlement. *Carth.* 433.

Settlement.

B **An** Order of Seſſions that a Conſtable ſhall return Money and Plate, *&c.* good. *Comb.* 204.

To a Conſtable to return Money.

C **Yet** an Order that an Overſeer ſhall return 3 *l.* fraudulently obtained, held ill, for he ought to be indicted. *Ibid.* 287.

Where an Order to return Money, ill,

D **An** Order of Seſſions may be confirmed in Part, and diſcharged in Part. *Ibid.* 287.

Confirmed in Part, and diſcharged in Part.

Original.

See { **Error.** **Jeofails.** **Variance.**

E **WHEN** two Originals are certified, one by the Plaintiff in the Errors, and the other by the Defendant in the Errors, the Defendant's Original ſhall ſtand.

When two Originals are certified, one by the Plaintiff, and the other by the Defendant.

Outlawry.

See { **Abatement.** **Bar.** **Pleas.** **Treaſon.**

F **A Man is outlawed if he doth not appear at the Return of the Exigent, if it be returned with a** Quinto exactus & non comperuit.

Outlawry, what.

The Court will not reverſe an Outlawry though both Parties conſent.

The Court will not reverſe an Outlawry, altho' both the Parties conſent to it, *viz.* The Party outlawed, and the Party at whoſe Suit he is outlawed, except there be Error aſſigned in the Outlawry: *Mich.* 22 *Car. B. R.* For Matters of Record are not to be deſtroyed without ſufficient Cauſe, and the Outlawry alſo doth concern the King as well as the Parties, and therefore not to be overthrown without Cauſe. A

If an outlawed Perſon levies a Fine before Seiſure, the Conuſee ſhall retain: Otherwiſe if after Seiſure.

After Outlawry in a perſonal Action, and before Seiſure, if the Party outlawed levies a Fine, the Conuſee ſhall retain againſt the King; otherwiſe, if the Seiſure be before the Fine levied, the King ſhall not be ouſted of his Pernancy. *Raym.* 17. B

The King may diſpoſe of the Land of a Perſon outlawed.

That the King may diſpoſe of the Land itſelf of a Perſon outlawed, by the Courſe of the Exchequer. *Ibid.* and *vide* 2 *Lev.* 49. C

In Error to reverſe an Outlawry, the ſame Outlawry is no good Plea.

That in a Writ of Error to reverſe an Outlawry, the ſame Outlawry is no good Plea. *Ibid.* 464. D

The King's Servant may be outlawed.

That the King's Servant may be outlawed. *Ibid.* 152. E

If an Outlawry be reverſed, Plaintiff may declare on a new Original in another County.

If an Outlawry be reverſed, the Plaintiff may declare upon a new Original in another County, than that where the Action was firſt laid. 3 *Lev.* 245. F

If Proclamation be not filed, Defendant may reverſe the Outlawry without Writ of Error.

Where the Defendant is outlawed in a civil Action in this Court, if the Proclamation is not filed, the Defendant may reverſe the Outlawry, without any Writ of Error brought, by pleading no Proclamation filed; and upon the *Cuſtos Brevium*'s attending the Court with the File of Writs, whereby it appears the Proclamation is not filed, the Court will reverſe the Outlawry, but he muſt put in Bail to appear to a new Writ to be brought; but if the Proclamation be filed, then he muſt bring his Writ of Error to reverſe it. G

Outlawry on Indictment for forcible Entry againſt ſeveral, may be reverſed as to ſome, and ſtand good as to others.

An Outlawry which is grounded upon an Indictment, upon the Statute againſt forcible Entry, preferred againſt divers Perſons, may be reverſed as to ſome of the Parties indicted, and yet may ſtand good as to others that are outlawed upon the ſame Indictment: *Hill.* 22 *Car. B. R.* For the Outlawries againſt them are ſeveral, and not entire, and the Proceedings to the Outlawry may be good as to the outlawing ſome of them, and the Proceedings to the Outlawry as to others may not be good. H

In all Caſes where a Suit was commenced by Original Writ, and afterwards it comes by Error into this Court, and there is Judgment entered thereupon I

If a Suit be commenced by Original, and brought by Error into *B. R.* Plaintiff ſhall have the ſame Proceſs on his Judgment, as he ſhould have had in the Court from whence the Record came. So if an Action be brought in *B. R.* by Original, Plaintiff may outlaw Defendant after Judgment.

upon in this Court, the Plaintiff ſhall have the ſame Proceſs upon his Judgment, as he ſhould have had at the Place from whence ſuch Record came; as in the Caſe of a Writ of Error upon a Judgment in the Common Pleas, in Debt, affirmed in this Court, the Plaintiff may upon this Judgment have a *Capias ad ſatisfaciendum*, and upon a *Non eſt inventus* returned, an Exigent; and ſo thereupon the Defendant ſhall be outlawed after Judgment, as the Practice is in the Common Pleas; ſo alſo where an Action is brought by Original in this Court, the Plaintiff may, if he recover Judgment, outlaw the Defendant after ſuch Judgment.

A **An** Outlawry that doth not expreſs, that the Party outlawed was proclaimed, as he ought to be, is not good, but may be reverſed: *Trin*, 23 *Car*. *B*. *R*. Becauſe it is defective in Matter of Subſtance.

Outlawry may be reverſed, if it do not expreſs the Party to have been proclaimed.

B **If** the Defendant do not appear upon the *Quinto exactus* made by the Sheriff of the County at his County-Court, in the County where the Defendant doth dwell, then he is outlawed *per Judicium Coronatoris*: 1650, 22 *Maii*, *B*. *S*. For the Coroner is the chief Officer in criminal Matters in the County.

When a Defendant is outlawed by the Judgment of the Coroner.

C **A Perſon** outlawed cannot ſue in any Court unleſs to reverſe his own Outlawry; for where a Perſon is *ad lucrandum*, there ought to be Ability in the Perſon. *Cro*. *Jac*. 425. *pl*. 11.

An outlawed Perſon cannot ſue in any Court but only to reverſe his own Outlawry.

D **He** may well make a Will and have Executors, *Cro*. *Eliz*. 575. *pl*. 2. or have an Adminiſtrator, *Cro*. *Eliz*. 850. *pl*. 6. 851.

He may make a Will, or have an Adminiſtrator.

E **A Priſoner** outlawed for Manſlaughter in *Middleſex*, brought a Writ of Error to reverſe it, and was aſſigned Counſel, and pleaded that he was at *Utrecht* beyond-ſea at the Time of the Outlawry; and upon the Trial the Court held, That it was not material what Place he was in beyond-ſea, ſo as he was over Sea. *Cro*. *Jac*. 365. *pl*. 1.

Error brought to reverſe an Outlawry in Manſlaughter.

That he was beyond-ſea.

F **One** outlawed cannot have a *Mandamus* to reſtore him to an Office, but muſt ſue out a new Writ, reciting that the Outlawry is reverſed. *Show*. *Rep*. 288.

Mandamus lies not for an outlawed Perſon.

G *Aſſumpſit* upon a Bill of Exchange, the Defendant pleads Outlawry in Bar, and good: Becauſe the Debt is certain, although to be recovered in Damages; and it is forfeitable by the Outlawry, as well as Debt upon a ſimple Contract. 3 *Lev*. 29. But where there is no Debt, nor any Thing to be forfeited, but Damages only to be recovered, as in Treſpaſs, Trover, *&c*. there it muſt be pleaded in Abatement only.

An Outlawry is a good Plea in Bar to an Action on a Bill of Exchange, and why.

H **A Defendant** pleads Outlawry in Bar; the Plaintiff ſays, *Nul tiel Record*, and upon a Day given *defecit de Recordo*; the Queſtion was, What

Outlawry pleaded in Bar, & *Def*. *defecit de Recordo*.

The Judgment may be at the Prayer of the Plaintiff either abſolute or a *Reſpondeas ouſter.*

the Judgment ſhould be? And the Court were of Opinion, That he may take his Judgment preſently for his Debt, or that he may pray that he may anſwer over; whereupon the Plaintiff's Attorney pray'd that he might have it abſolutely, and he had it *niſi Cauſa. Cro. Car.* 566. *pl.* 21.

A Termor is outlawed, he aſſigns his Term, the Outlawry is reverſed: He may bring Treſpaſs for the Profits, for it is now as if no Outlawry had ever been.

If the Term were ſold he ſhall have it again, and not the Money which it was ſold for.

A **A Termor** outlawed of Felony, granted his Term to the Plaintiff, who is put out by *J. S.* afterwards the Outlawry is reverſed; the Plaintiff brings Treſpaſs for the Profits taken between the Aſſignment and Outlawry: And the Queſtion was, Whether the Action did lie, for during that Time the Queen had the Intereſt? But adjudged for the Plaintiff; for by the Reverſal of the Outlawry, it is as if no Outlawry had ever been, and there is no Record of it: *Cro. Eliz.* 270. *pl.* 13. 278. *pl.* 3. Nay, if the Queen had ſold the Term upon the Outlawry, he ſhall have his Term again upon the Reverſal, and not the Money which it was ſold for. *Cro. Eliz.* 278. *pl.* 3.

What accrues to the King upon Outlawry in perſonal Actions.

B **Nothing** accrues to the King by an Outlawry in perſonal Actions, but only Perception of the Profits; he cannot plow or ſow the Land. 1 *Lev.* 33.

Where the King is ouſted of the Pernancy of the Profits: And where not.

C **By** a Feoffment made before a Seiſure upon an Outlawry, the King is ouſted of the Pernancy of the Profits; but not by a Feoffment after Seiſure. 1 *Lev.* 33, 34.

How to reverſe Outlawries in all Caſes but Treaſon and Felony, without appearing in Court.

4 & 5 W. & M. cap. 18.

Where Special Bail is required.

A Bond for Appearance.

D **By** a Statute made the 4 & 5 *W. & M. cap.* 18. it is enacted, That after the firſt Day after *Eaſter* Term, no Perſon who ſhall be outlawed in this Court for any Matter, Cauſe, or Thing, (Treaſon and Felony only excepted) ſhall be compelled to come in Perſon into, or appear in Perſon in this Court to reverſe ſuch Outlawry: But he may appear by Attorney, and reverſe the ſame without Bail in all Caſes (except where ſpecial Bail ſhall be ordered by the Court.) Alſo, That if any outlawed Perſon, other than for Treaſon or Felony, ſhall, after the firſt Day of *Eaſter* Term, be arreſted upon a *Capias Utlagatum* out of this Court; the Sheriff, who hath taken ſuch Perſon, (in all Caſes where Special Bail is not required by the ſaid Court) may take an Attorney's Engagement under his Hand, to appear for the Defendant, and to reverſe the ſaid Outlawry, and diſcharge the Defendant from ſuch Arreſt. And where Special Bail is required, the Sheriff may take Security of the Defendant by Bond, with one or more ſufficient Surety or Sureties, in the Penalty of double the Sum for which Special Bail is required, and no more, for his Appearance by Attorney in Court, at the Return of of the Writ, and for performing ſuch Things as ſhall be required by the Court; and after ſuch Bond taken, then to diſcharge ſuch Defendant from the ſaid Arreſt. **Alſo**, Where any Perſon is arreſted upon an Outlawry, and cannot within the Return of the Writ, give Security, as aforeſaid, in Caſes where Special Bail is required, ſo as he be committed to Gaol: Then whenſoever ſuch Priſoner ſhall find ſufficient Security to the Sheriff, in whoſe Cuſtody he ſhall be, for his Appearance by Attorney in the ſaid Court, at ſome Return of the Term next following, to reverſe ſuch Outlawry, and to do and perform ſuch other Things as ſhall be required by the ſaid Court; it ſhall be lawful for the Sheriff to diſcharge the ſaid Priſoner for the ſame.

He may be diſcharged out of Cuſtody upon putting in of good Bail.

A **Where** the Party appears upon the Exigent, and ſues out his *Superſedeas*, and allows it with the Sheriff, the Sheriff cannot then return him Outlawed, but muſt return the *Superſedeas*; and he ſhall not put in any Bail, be the Debt what it will.

Where a *Superſedeas* is allowed with the Sheriff, he muſt (if called for) return it upon the Exigent.

B **A Man** taken upon an Outlawry after Judgment, although it were after the Year and Day: And tho' the Record be removed into another Court, ſhall be in Execution for the Plaintiff. *Cro. Eliz.* 706. *pl.* 28. 707.

A Man taken upon an Outlawry after Judgment, is in Execution.

C *A.* indebted to *B.* on a Judgment, and to *C.* on Bond, is outlawed at the Suit of *C.* and his Lands ſeized, the Outlawry ſhall be preferred before the Judgment, except Fraud ſhewn. *Salk.* 495.

Outlawry to be preferr'd before a Judgment.

D **One** outlaw'd for a Miſdemeanor only, can't be thereon fined for the Fact. *Ibid.* 494.

Nor to be fined.

E **Where** the Plaintiff is allowed to reverſe it at his own Charge, and the Difference, *inter B. R.* and *C. B.* herein. *Ibid.* 495.

Reverſal.

F **The** Defendant need not appear in Perſon to reverſe it, except in Treaſon or Felony; if one comes in or appears *gratis*, he may reverſe it without Bail, *aliter* if by *Capi Corpus*. *Ibid.*

Nor to appear in Perſon.

G **But** one of them may be ſummoned and ſevered, and then it ſhall be only for his Benefit that appeared. *Ibid.*

Summon'd and ſever'd.

H **On** Error to reverſe an Outlawry for Felony, if there be Lands a *Sci. fa.* muſt iſſue. *Salk.* 495.

Scire facias.

I **But** if the Attorney General confeſs on Record, there no *Sci. fa.* is neceſſary. *Ibid.*

Where not.

K **An** Outlawry on meſne Proceſs does not make the Debt a Lien on the Lands. *Salk.* 80.

Lien on Lands.

L **Error** in Fact aſſigned to reverſe Outlawry in High Treaſon, by the Perſon outlaw'd *quatenus*, and Iſſue taken upon the Error aſſigned. *Skin.* 16.

Error.

Error.

If the Perſon outlaw'd was out of *England* at the Time of Exigent awarded, this is Error. *Skin.* 16. A

What Outlawry pleadable, and what not.

An Outlawry in *Lancaſter*, is pleadable in *B. R.* but Outlawry in *Cheſter* is not, and why. 3 *Salk.* 111. B

Forfeiture.

What is forfeited by an Outlawry. *Ibid.* 262. C

Where a good Plea.

Where an Outlawry is a good Plea, and where not. *Ibid.* 262, 263, 270. D

High Treaſon.

See an Outlawry for High Treaſon reverſed for Error. *Mod. Caſes in Law and Equity* 26. E

Bail.

One outlawed for a ſeditious Libel, bailed on bringing a Writ of Error. *Ibid.* 177. F

Revers'd.

A malicious Outlawry may be reverſed on Motion. *Comberb.* 19. G

Fine.

See one outlawed fin'd tho' abſent. *Ibid.* 36. 77. *contra.* H

Oyer and Terminer, See Judges.

Oyer of a Deed, &c.

See { Emparlance. Monſtrans.

Oyer of a Deed, what.

Oyer of a Deed is where a Man brings an Action of Debt upon a Bond, and the Defendant appears, and prays, That he may hear the Bond wherewith he is charged; which ſhall be allowed him: And he is not bound to plead till he hath it, paying for the Copy of it. I

Defendant may plead without Oyer, but cannot after wave his Plea, and demand Oyer.

Defendant may plead without Oyer of the Bond, if he pleaſes; for he may take upon him to remember it without hearing it: But if he do plead without Oyer of it, he cannot after wave his Plea, and demand Oyer of it. 18 *Apr.* 1654. *B. S.* K

What Oyer of a Deed means.

To demand Oyer of an Obligation, is not only for the Defendant's Attorney to deſire the Plaintiff's L

Attorney to read the Obligation to him, as the Word ſeems only to import, or to have a Sight of it; but that he may have a Copy of it, that his Client may conſider by it what to plead to the Action.

A **When** upon Oyer of the Deed it is entered, the whole Caſe then appears to the Court as fully, as if the Deed had been in the Plea. *Hob.* 217.

An Oyer of a Deed, and Entry of it, it is as if pleaded.

B **Oyer** of the Deed is the Act of the Party, and ſhall be an Eſtoppel: But Oyer of the Writ is an Act of the Court, and ſhall not be an Eſtoppel. *Lutw.* 1644.

Oyer of the Deed, and Oyer of the Writ; what they are.

C **Oyer** of the Deed cannot be demanded but during the Time it is in Court: And that is all the Term wherein it is produced: *Lutw.* 1644. And then it may be entered *in hæc verba*, and there may be a Demurrer or Iſſue upon it: But it cannot be done of another Term, becauſe the Deed is then out of the Court. 5 *Rep.* 76. *a. b.*

When Oyer of the Deed muſt be demanded.

D **In** the King's Bench you may pray Oyer of a Deed after Imparlance; but you cannot do it in the Common Pleas. 5 *Co.* 74. *Wymark*'s Caſe.

When Oyer of a Deed may be demanded after Imparlance.

E **After** Imparlance Oyer cannot be demanded, for Imparlance is always to another Term: Alſo after a Plea in Abatement, Oyer cannot be demanded the ſame Term to plead another Dilatory. *Mod. Caſes* 27, 28.

No Oyer can be demanded after Imparlance.

F **Where** there ought to be Oyer, the Party (if he demanded it) is not bound to plead without it. *Mod. Caſes* 28, by *Powel.*

Where the Defendant is not bound to plead without Oyer.

G **Defendant** in pleading of Articles to a Condition of a Bond, and that he performed *omnia*, omitted Part; the Plaintiff prays, That the Articles be enrolled; which was done, and then demurred, and had Judgment; becauſe the Plaintiff might have aſſigned a Breach in the other Matter omitted, but was deprived of it. 3 *Lev.* 50.

Where part of the Articles were omitted.

H **Oyer** demanded of the Deed, which is entered *in hæc verba*: Demurrer to it and Joinder. 1 *Plow.* 22. *b.* 23. *a.*

Oyer of a Deed entered *in hæc verba*: Demurrer and Joinder.

I **Want** of *Profert*, *&c.* is only Form, and cured by a Verdict. *Salk.* 497.

Profert in Curia.

K **And** a *Profert in Curia* being made unneceſſary, Oyer ſhall not be given. *Ibid.*

Where no Oyer.

L **Variance** between the Writ and Count not pleadable without praying the Oyer of the Writ. *Salk.* 658.

Variance.

M **A Deed** remains in Court all the Term 'tis produced, *aliter* of Letters Teſtamentary, or Adminiſtrations. *Ibid.* 497.

When a Deed remains in Court.

N **Where** Letters Patent muſt be pleaded with a *Profert*, or not. *Ibid.*

Letters Patents.

A Deed to be ſet forth.

Where one is bound to make a Deed, he muſt ſet it forth particularly. *Salk.* 498. A

Imperfect Oyer at the Defendant's Peril.

Defendant demands Oyer of a Deed indented, which he himſelf ought to ſet forth; and the Plaintiff gives Oyer but imperfectly, 'tis at the Defendant's Peril. *Ibid.* B

Oyer denied is Error.

Denial of Oyer where it ought to be granted, is Error. *Ibid.* C

Aliter, of granting it where it ought not. *Ibid.* D

When the Plaintiff may ſign Judgment for want of Oyer.

Where the Defendant pleaded a Record of the ſame Court in Abatement, and the Plaintiff craved Oyer thereof, if it is not given in convenient Time, *viz.* the next Day, the Plaintiff may ſign Judgment. *Carthew* 453, 454, 517. E

Where the Condition Part of Declaration.

Where upon craving Oyer of the Bond and the Condition, and 'tis entred *in hæc verba*, there the Condition is Parcel of the Declaration, and not of the Defendant's Plea. *Carthew* 513. F

Demand of Oyer a Kind of Plea.

The Demand of Oyer is a Kind of Plea, and 'tis always intended that the Deed is in Court when Oyer is demanded. 3 *Salk.* 119. G

How granted, and when.

In what Caſe Oyer may be granted, and how, and where not. *Vide Comberb.* 187. H

Paper-Book.

Paper-Books, what.

Paper-Books are the Iſſues in Law, or the Iſſues in Fact, upon Special Pleadings, made by the Clerk of the Papers, who is an Officer for that Purpoſe. I

Clerks to ſubſcribe Counſels Names to all Copies of Pleas and Paper-Books.

The Clerks of the Papers of this Court in all Copies of Pleas and Paper-Books by them to be made up, ſhall ſubſcribe to ſuch Copies of Pleas and Paper-Books, the Names of the Counſel who have ſigned ſuch Pleas, as well on the Behalf of the Plaintiff as of the Defendant; and that in all Books delivered to the Judges of this Court, the Names of the Counſellors who did ſign thoſe Pleas, as well on the Behalf of the Plaintiff as the Defendant, ſhall be ſubſcribed to thoſe Books by the Clerks or Attorneys who ſhall deliver the ſame. *Per Cur. Paſch.* 18 *Car.* 2. K

A In all Special Pleadings, where the Plaintiff takes Iſſue upon the Defendant's Pleadings, or traverſeth the ſame, or demurreth, ſo as the Defendant is not thereby let in to alledge any new Matter; there he may make up the Paper-Book, without giving a Rule with the Secondary to rejoin, *&c.* And if the Defendant do not in four Days incluſive, after the Paper-Book delivered, (provided the ſame be delivered in Time) bring back the Paper-Book, and join Iſſue or demur, or give a general Iſſue, (Joining in Iſſue is to pay ſo much as the Entry of the Defendant's Part of the Book and Warrant of Attorney comes to) Judgment may be entered by Default.

Where the Plaintiff may make up the Paper-Book.

Paraphernalia, See Baron and Feme.

Pardon.

See { Aliens.
Forfeiture.
King.
Pleas and Pleadings.

B He that will take the Benefit of a general Pardon, ought to plead the Statute by which the general Pardon was granted: 21 *Car. B. R.* 8 *Ed.* 4. 7. 4 *H.* 7. 8. That the Court may judge whether his Offence be pardoned or not, which they cannot do, except the Pardon be pleaded, and that the Party ſhew he is compriſed in the Pardon, and not excepted out of it.

How to take Benefit of a general Pardon.

C **One** that is found guilty of Manſlaughter muſt ſue out his Pardon, or elſe his burning in the Hand cannot be diſpenſed withal; for Manſlaughter is Felony. 23 *Car. B. R.* for which he is by Law to be burnt in the Hand, except he be pardoned. See *Lutw.* 1009. Pardon in diſcharge *d'un Conviction de Recuſancy* pleaded.

A Man convicted of Manſlaughter, muſt ſue out his Pardon.

D **Pardon** of Murder, *&c.* ſhall not be allowed without a Writ of Allowance directed to the Juſtices. *Raym.* 13.

Pardon of Murder not allowed without a Writ.

E **A Pardon** of Killing and Felony, *&c.* no Pardon of Murder. *Ibid.*

Pardon of Felony, no Pardon of Murder.

Where Acceſſary muſt anſwer, tho' the Principal be pardoned.

That if the Principal be attainted of Burglary, the Acceſſary muſt anſwer though the Principal be pardoned. *Raym.* 477. A

Debt due to *Felo de ſe*, and all Forfeitures afterwards pardoned by Act of Parliament, the Debt is releaſed to the Debtor.

If a Debt be due to a Man who becomes and is found *Felo de ſe*, and all Forfeitures and Sums of Money are afterwards pardoned and releaſed by Act of Parliament, the Debt is releaſed and pardoned to the Debtor, and does not reveſt to the Adminiſtrator of *Felo de ſe*, if there be not ſpecial Words of Reſtitution in the Act, 1 *Saund.* 362, 363. See 1 *Lev.* 26, 120. and 3 *Lev.* 136, 332. B

The King's Power of pardoning.

The Power of pardoning all Offences, is an inſeparable Incident to the Crown, and its Royal Power. *Show. Rep.* 284. C

The King may pardon Murder.

The King may pardon Murder altho' he cannot diſpenſe with it. *Per Hale, arguendo* in *March* 313. D

How a ſpecial Pardon ſhall be taken.

The King's ſpecial Pardon ought to be taken ſtrictly. See *March* 217. E

The King may pardon Homicide found in an Appeal of Murder.

In an Appeal for Murder, the Defendant is found Not guilty of the Murder, but guilty of Homicide: Here the Suit of the Party is the Appeal of Murder; that which he is found guilty of is not for the Party, but for the King; the King pardons the Defendant; it ſeems to me that the King may well do it. See *Cro. Eliz.* 464. *pl.* 13. 465. F

Treaſon not pardoned by Implication.

The King pardons no Treaſons by Implications, but it muſt be by ſpecial Words of Pardon. *Hutt.* 21. How to be pardoned, ſee Title **Treaſon.** G

How a general Pardon to be conſtrued.

A general Pardon muſt be taken moſt beneficially for the Subject, and moſt ſtrong againſt the King. 5 *Rep.* 49. *b.* 50. *a.* H

The King may pardon Burning in the Hand in an Appeal.

The King may pardon the Burning in the Hand in an Appeal, though at the Suit of the Party. 5 *Rep.* 50. *a. Contra, Raym.* 370. I

How to plead a general Pardon with an Exception.

Where there is a general Pardon with an Exception, the Party ought to ſhew that he is not any of the Perſons excepted. 1 *Lev.* 25. K

Pardon of a Papiſt Convict, takes away the Diſability.

Pardon by the King of a Papiſt convicted, takes away the Diſability. 3 *Lev.* 333. 2 *Plow.* 484. *b.* 488. *a.* L

Who ſhall have the Eſtate of a Copyholder for Life attainted of Felony, and pardoned.

Though a Copyholder for Life be attainted of Felony and pardoned, the Reverſioner for Life after him ſhall have the Eſtate. M

A general Pardon, what it dischargeth.

A general Pardon doth diſcharge not only the Puniſhment which was to have been inflicted upon the Perſon that did commit the Offence pardoned, but alſo the Guilt of the Offence itſelf: It pardons *Culpa* ſo clearly, that in the Eye of the Law the Offender is as innocent, as if he never had committed the Offence: So far doth Mercy extend therein. N

A **But** where a Parſon was Simoniacally preſented, and afterwards a general Pardon came; although the Eccleſiaſtical Cenſures were pardoned, yet the Pardon did not operate any Thing to make him an Incumbent: For upon his Simoniacal Inſtitution and Induction, his Living became abſolutely void; and a Pardon can never make that good, which an Act of Parliament hath made void: This was one *Philips*'s Caſe, *Tempore Car.* 2.

Although Eccleſiaſtical Cenſures are pardoned, yet Simony is not pardoned by a general Pardon.

B **The** King may pardon all Suits in the Spiritual Court *pro ſalute Animæ*, as well before as after a Suit commenced: But where the Party hath a Property in the Thing, as for Tithes, Legacy, *&c.* there the King cannot pardon. 5 *Rep.* 51. *a. b.*

Where the King may pardon Offences in the Spiritual Court, and where not.

C **Although** the Suit in the Spiritual Court be for the King, which he may pardon; yet when Sentence is given in a Cauſe of Defamation, *&c.* and Coſts are taxed for the Plaintiff, the Plaintiff hath thereby a particular Intereſt in them by the Sentence, which the King cannot pardon: But if the Pardon had been before Sentence, it had diſcharged all. 5 *Rep.* 51. *b.*

The King's Pardon diſchargeth Coſts in the Spiritual Court before Sentence, not after.

D **A Pardon** in general Words, is not ſufficient upon a Conviction for Felony: But the Crime for which he is convicted, ought to be particularly mentioned.

A Pardon in general Words.

E **The** Words *Pardonavit, Remiſit & Relaxavit,* in a Charter of Pardon granted to one for Felony, doth not reſtore unto him the Goods which he forfeited to the King by his Felony; but the Word *Reſtituit* in the Pardon, doth reſtore him to his Goods: For the former Words go but only to the pardoning the Offence, but the latter to the reſtoring the Eſtate forfeited by the Felony; and ſo the Words do import in their proper Signification.

What Words do reſtore in a Pardon.

F **If** a Man be attainted of Treaſon or Felony, and the King pardons him, and he afterwards purchaſes Lands and marries, and hath Iſſue and dies, this Iſſue ſhall inherit; for by his Pardon his Blood was well reſtored, and he is thereby enabled to purchaſe, and need not for this Purpoſe to have Reſtitution. *Dalliſon* 14. *pl.* 3.

A Pardon capacitates a Man to purchaſe Lands.

G **A Pardon** for Treaſon cannot be pleaded, until the Priſoner be charged with the Indictment for the Offence committed; For before he is charged by the Indictment, it doth not appear to the Court, that he is the Perſon that is pardoned by the Pardon. See Title **Indictment.**

A Pardon for Treaſon cannot be pleaded, till the Priſoner is charged with an Indictment.

H **If** one have a Charter of Pardon for Felony committed by him, the Court ought to allow it upon the Prayer of the Party that hath it; but he muſt produce it at the Bar, and pray upon his Knees that it may be allowed. 13 *Nov.* 1650. *B. S.* For if he produces it not, the Court cannot take Notice of it; and if he pray not the Allowance of it, the Court can-

How a Pardon for Felony is to be allowed.

not tell whether the Party do accept of the Benefit of it: And he does it on his Knees to expreſs his Thankfulneſs for the Mercy afforded him by the Pardon.

A general Pardon pardons Publick Offences to the Commonwealth, not Private Injuries.

A **A general** Pardon doth pardon publick Offences done to the Commonwealth, but not private Injuries done to particular Perſons: For if it ſhould, this would be to mix Mercy and Injuſtice together; to be pitiful to one, and cruel to another, in one and the ſame Act.

The King may pardon or releaſe before Action commenced by Informer, not after.

B **After** a popular Action commenced, although Mr. Attorney will enter a *Nolle Proſequi*, or reply ſolely, where the Defendant pleads ſpecially; yet if he will not proſecute for the King, the Informer may proſecute for his Part, which the King cannot releaſe: But before an Action commenced by an Informer, the King may pardon or releaſe it. 11 *Rep.* 65. *b.* 66. *a.*

Acts of general Pardon, 2 W. & M. cap. 10. Seſſ. 1. 6 & 7 W. 3. cap. 20. 7 Ann. cap. 22.

C **In** the firſt Seſſion of Parliament. 2 *W.* & *M.* *cap.* 10. there was a general Act of Pardon made. Another 6 & 7 *W.* 3. *cap.* 20. and another 7 *Annæ*, *cap.* 22.

Pleading a Pardon.

D **A Pardon** for Murder pleaded, but without a Writ of Allowance, not good. *Carthew* 120. *Salk.* 499.

The like.

E **Pardon** general muſt be pleaded with the uſual Averments. *Carthew* 132.

Murder.

F **The** King may pardon Murder by expreſs Words. *Salk.* 499.

Not to be charged in Cuſtody.

G **One** pardoned ſhall not be charged in Cuſtody with civil Actions. *Ibid.* 500.

Nuſance.

H **Tho'** a Fine for a Nuſance is pardoned by a general Pardon, yet the Abatement is not excuſed. *Ibid.* 458.

Murder.

I **A Pardon** of Murder is good without the Word *Murdrum*. *Skin.* 157.

Pardon before the Puniſhment inflicted.

K **One** convict of Forgery, and ſentenced to be put in the Pillory, obtains the King's Pardon; upon a Motion for a Rule to ſet her in the Pillory, ſhe, before her Appearance upon the Rule, by her Counſel ſhews the King's Pardon, the Court gave her Time to ſhew Cauſe. *Ibid.* 159.

What is reſtored by a Pardon.

L **The** King's Pardon reſtores a Perſon to his Credit who is convicted, or has Judgment againſt him for a Crime which makes him incapable of being a Witneſs. *Ibid.* 578, 579.

M **The** Difference between a general and ſpecial Pardon. 3 *Salk.* 264.

Sureties to be found.

N **Upon** a Pardon of Felony the Party muſt find Sureties for his good Behaviour by Recognizance for any Time under ſeven Years. *Ibid.* 265.

Pariſh.

See { **Prohibitions.** **Tithes.** **Ways and Highways.**

A **Pariſhes were made by the Lateran Council, and before that Council every Man was obliged to pay Tithes to a Prieſt, but had his Liberty to pay them to what Prieſt he pleaſed: Then came the Council which made the Pariſhes, and decreed, That every Perſon ſhould pay his Tithes to his Pariſh Prieſt,** See Hob. 296.

Pariſhes, what.

B **A Pariſh** may compriſe many Vills within it: *Hill.* 23 *Car. B. R. Paſch.* 24 *Car.* Yet generally a Pariſh ſhall not be accounted to have any more than one Vill in it, except the contrary be ſhewed. *Hill.* 23 *Car. B. R.* Becauſe moſt Pariſhes have but one Vill within them.

Many Vills may be in a Pariſh.

C **It** ſhall not be intended that there is more than one Pariſh in a City, except the contrary be made to appear: *Trin.* 23 *Car. B. R.* For ſome Cities have but one Pariſh. See **Intendment.**

Only one Pariſh ſhall be intended in a City.

D **If** a Highway lie within a Pariſh, the Pariſh within which it lieth is bound to repair it of common Right, if it do not appear that ſome other Perſons are bound by Law to repair it: *Mich.* 1650. *B. S.* 24 *Oct.* For it ſhall be intended, that the Pariſhioners where it lies, have the greateſt Benefit of it, and do make the moſt Uſe of it, and it is the moſt convenient and equal for the Pariſhioners in every Pariſh, to repair the Ways within it, if they be able to do it.

A Pariſh is bound to repair Highways.

E **Where** there are ſeveral Vills in a Pariſh, they have uſually Peace-Officers and Overſeers of the Poor for every particular Vill, and it often happens that every Vill, and not the whole Pariſh, maintains the particular Poor of ſuch Vill.

The ſeveral Vills in a Pariſh have ſeveral Officers.

Where

Where there is an ancient Pariſh and an ancient Vill within their Pariſh which have a Church of their own, they muſt maintain their own Poor, and ſhall not pay to the other Pariſh. 43 **Eliz. cap.** 2.

A **Where** an ancient Vill within a Pariſh hath for above two hundred Years had a Church of their own, and Churchwardens, and hath had parochial Rites, and been reputed as a Pariſh, it is a Pariſh within the Statute of 43 *Eliz. cap.* 2. and ſhall provide for their own Poor, and ſhall not pay to the Poor of the Pariſh wherein their Vill lies. *Cro. Car.* 92. *pl.* 17, 93. and 384. *pl.* 6. 396.

Money deviſed to a Pariſh, ſhall go to the Poor of the Pariſh.

B **Money** given by Will to a Pariſh, ſhall be to the Poor of the Pariſh. *Chanc. Rep.* 134, 135.

Where a Pariſh is ſued for Incloſures, Suit to a Mill, or the like, ſome of the Pariſhioners may pray to be made Defendants for the whole Pariſh.

C **Where** a Pariſh was ſued, four moved to be made Defendants, and a Decree againſt them; a Pariſhioner, none of the four, conteſts the Decree. *Curia.* If the Defendant ſhould not be bound, Suits of this Nature, as Suits for Incloſures, Suits againſt the Inhabitants for Suit to a Mill, and the like, would be infinite and impoſſible to be ended. *Chanc. Rep.* 272.

Who are liable to keep poor Children.

D **If** the Father of poor Children leaves the Pariſh, and his Children in the Pariſh, if the Children have a Grandfather or Grandmother that is able to keep them, the Pariſh is not bound to maintain them; but the Grandfather or Grandmother ſhall be compelled to maintain them, as by the Juſtices of the Peace, or the greateſt part of them, at a Quarter-Seſſions of the Peace ſhall be directed. See Statute 43 *Eliz. cap.* 2. *Sect.* 7.

43 **Eliz. cap.** 2. **Sect.** 7.

How a Pariſh ought to plead to an Indictment, for not amending an Highway.

E **A Pariſh** cannot plead Not-guilty, or that they ought not to repair a Highway, unleſs they ſhew who ought to repair it: For *prima facie* the Pariſh ought to repair it, until the contrary be made appear. *Bermondſey* Pariſh's Caſe, *Show. Rep.* 270. See 1 *Ventr.* 256.

Pariſhioners cannot preſcribe, but may alledge a Cuſtom.

F **Pariſhioners** cannot preſcribe, except for an Eaſement, as a Way to a Church, or Common Fountain; but not for an Intereſt. (See Title **Preſcription.**) But they may alledge a Cuſtom. *Co. Entr.* 625. *Cro. Eliz.* 441.

Inſtitution of Pariſhes.

G **For** what Purpoſe Pariſhes were inſtituted. 3 *Salk.* 88.

Intendment of a Vill.

H **A Pariſh** *prima facie* intends a Vill; and ſo if a Place be nam'd generally. *Salk.* 501.

Poors Rates.

I **What** will bring a reputed Pariſh within 43 *Eliz.* for Poors Rates, *&c. Vide* **Poor.** and *Ibid.*

United Pariſhes.

K **In** Replevin upon the Statute of *Car.* 2. for uniting Pariſhes in *London* after the Fire: The Queſtion was, Whether a ſeveral Rate made upon each Pariſh apart after the Rate they paid before the Fire, and which upon the Appeal had been confirmed by the Lord-Mayor; or a joint Rate made upon both Pariſhes together by the Lord-Keeper and two Barons, was the more purſuant to the Act, and adjudged, That reſpective Pariſhes muſt be intended in the Act united Pariſhes. *Skinner* 216.

Pariſh Rates relating to United-Pariſhes.

A The Pariſh of St. *Mary* being united to the Pariſh of St. *Swithin* by Act of Parliament, and the Pariſh of St. *Swithin* remaining the only Pariſh Church, a Pariſh Rate ſhall charge the Inhabitants of the Pariſh of St. *Mary* to contribute to the Repair to the Church of St. *Swithin*. *Ibid.* 588, 616.

Park.

What a Park is.

In what it differs from a Chace or Warren.

B A Park is a Piece of Ground incloſed, and ſtored with Wild Beaſts of Chace; and a Man may have it either by Preſcription, or the King's Grant. Manwood in his Foreſt-Laws defines it thus: A Park is a Place of Privilege for Wild Beaſts of Venery, and alſo for other Wild Beaſts of the Foreſt, and of the Chace, tam ſylveſtres quam campeſtres: And ſuch a Park differs from a Chace or Warren in that it muſt be incloſed, and may not lie open; for if it do, that is a Cauſe of Seiſure into the Hands of the King, as a Thing forfeited; as a Free Chace is, if it be not encloſed: Beſides, the Owner cannot have an Action againſt ſuch as hunt in his Park if it lie open.

What a Park conſiſts of.

What is a diſparking.

C The King may, by his Letters Patents, diſſolve his Park: Alſo, where all the Deer are deſtroyed, it ſhall no more be accounted a Park, for a Park conſiſts of Vert, Veniſon, and Encloſure; and if it be determined in any of them, it is a total diſparking. *Cro. Car.* 59, 4, 60.

The Owner may diſpark it, notwithſtanding his Grant to a Keeper for Life.

D That notwithſtanding the granting of the Office of Keeper for Life, with a Salary, yet the Owner may diſpark it when he pleaſes. *Ibid.*

When a Park is diſſolved, the Office dependant upon it is gone, and the Keeper hath no Remedy for his Salary.

E That when a Park is diſſolved, the Office dependant upon it is determined, and the Keeper hath not any Remedy for his Salary and Perquiſites: But ſo long as the Park continues, he cannot diſcharge him of the Office, and make another Officer. *Ibid.*

Parliament.

See { **Privilege.** **Statutes.**

Parliament, what.

It is called Parliament, becauſe every Member of that Court ſhould ſincerely and diſcreetly Parler la ment, viz. **Speak his Mind for the general Good of the Commonwealth.** Co. Lit. 10. a. A

When the Parliament is accounted to begin.

The Parliament is not accounted to begin until the firſt Day of the Sitting thereof; and thence it is called the firſt Seſſion of Parliament, altho' the Writs are returned, and many Adjournments may be before: *Paſch.* 1650. *B. S.* 21 *Maii.* The Writs mentioned are meant the Writs directed to the Sheriffs of the ſeveral Counties, and to the Cities and Boroughs, to elect Members for them to ſerve in Parliament. B

Each Seſſion a new Parliament.

Every Seſſion is a new Parliament. *Raym.* 120. C

How Courts take Notice of Parliaments.

Courts *ex Officio* ought to take Notice of the Beginning, Prorogation, and End of every Parliament. 1 *Lev.* 296. D

Writ of Error in Parliament.

Where a Writ of Error lies only in Parliament. 1 *Saund.* 346. E

Petitions to Committees.

Concerning delivering Petitions to Committees of Parliament, *&c.* *Ibid.* 132, 133. F

Priſoners by their Order are diſcharged after a Prorogation.

One taken by Order of Parliament, after their Prorogation ſhall be diſcharged. *Raym.* 120. G

Which determines their Orders.

That all their Orders determine by Prorogation. 1 *Lev.* 165. H

Judgment in Parliament executed by Chancellor.

Judgment given in Parliament may be executed by the Lord Chancellor. *Ibid.* I

Diſſolution alters not the State of Impeachments.

That the Diſſolution of a Parliament doth not alter the State of the Impeachments brought up by the Commons in a preceding Parliament. *Id.* 384. K

Act to continue for three Years, and to the End of the next Seſſion: Next Seſſion begins after the three Years.

An Act to continue for three Years, and from thence to the End of the next Seſſion of Parliament: The next Seſſion is to begin after the End of the three Years. 1 *Lev.* 265. L

A All Acts of Parliament take Effect from the Beginning of the Parliament, unleſs otherwiſe ordered by the Act itſelf. *Hob.* 111.

When Acts of Parliament take Effect.

B The Court will not meddle in an Action upon a double Return, until determined in Parliament. 3 *Lev.* 29. *Lutw.* 88, 89.

On an Action for a double Return the Court will not meddle, 'till it be determined in Parliament.

C All Acts of Parliament which concern the King, are general Acts, and need not be ſet forth in Pleading. 1 *Plow.* 231. *a.*

Acts concerning the King, are general Laws.

D Of all general Statutes the Judges muſt take Notice, altho' not pleaded: But ſpecial or particular Acts muſt be pleaded: *Generale dicitur a genere, and Speciale a Specie.* 4 *Rep. a.*

Judges muſt take Notice of general Laws.

E For the true Interpretation of all Statutes in general, be they Penal or Beneficial, Reſtrictive or Enlarging of the Common Law, four Things are to be obſerved:

Four Things to be obſerved in the true Interpretation of Statutes.

F 1*ſt*, What the Common Law was before the making thereof.

2*dly*, What was the Miſchief or Defect not provided for by the Common Law.

3*dly*, What Remedy the Parliament had appointed to cure the Diſeaſe of the Nation.

4*thly*, The Remedy: And then it is the Judge's Office, always to make ſuch Conſtruction that will repreſs the Miſchief, and advance the Remedy. 3 *Rep.* 7. *b.*

G The *Scandalum Magnatum* Act, and all Acts concerning the King, the Court is bound to take Notice of. 4 *Rep.* 12, 13.

The Courts are bound to take Notice.

H How to declare upon an Act made at a Seſſion by Prorogation. *Lutw.* 140.

How to declare upon an Act made at a Seſſion by Prorogation.

I Where Judgments, Deeds, *&c.* are enacted by Act of Parliament to be void, they are not *ipſo facto* void, but only voidable by Pleading. 5 *W. & M. B. R.*

Where Judgments, Deeds, *&c.* are enacted to be void; how to be made void.

K By an Act made 7 & 8 *W.* 3. *cap.* 15. entituled, *An Act for the continuing and ſitting of a Parliament, in Caſe of the Death or Demiſe of the King, his Heirs, and Succeſſors:* That the Parliament in Being ſhall not be diſſolved by the Death of the King, his Heirs, or Succeſſors; but ſhall ſit for ſix Months after, unleſs ſooner diſſolved or prorogued by the Succeſſor: And in Caſe there ſhall be no Parliament in Being, at ſuch Death or Demiſe, then the laſt preceding Parliament ſhall immediately convene, and ſit, and act, as if they had never been diſſolved.

For the continuing of the Sitting of the Parliament at the King's Death.

7 & 8 W. 3. cap. 15.

Not

The Act for frequent Meetings of Parliament. 6 & 7 W. 3. cap. 2.

A **Not** to abridge the King's Power to prorogue or diſſolve Parliaments, nor make void the Act of 6 & 7 *W.* 3. *cap.* 2. *For the frequent Meetings of Parliaments.*

7 & 8 W. 3. cap. 25.

For regulating the Elections of Members, and irregular Proceedings of Sheriffs.

B **See** An Act made 7 & 8 *W.* 3. *cap.* 25. *For the further regulating Elections of Members to ſerve in Parliament, and for the preventing of irregular Proceedings of Sheriffs, and other Officers, in the electing and returning of ſuch Members.*

Another Act for the preventing irregular Proceedings of Sheriffs, *&c.* in returning Members.

10 & 11 W. 3. cap. 7.

C **See** alſo another Act made 10 & 11 *W.* 3. *c.* 7. entituled, *An Act for preventing irregular Proceedings of Sheriffs, and other Officers, in making of Returns of Members choſen to ſerve in Parliament:* And ſome Alterations and Additions made to the Act of 7 & 8 *W.* 3. *cap.* 25.

An Act for the frequent Meeting of Parliaments once in three Years.

6 W. & M. cap. 2.

D **By** an Act made 6 *W.* & *M.* *cap.* 2. entituled, *An Act for the frequent Meeting and Calling of Parliaments*, it is enacted, That from henceforth a Parliament ſhall be holden once in three Years at the leaſt.

Within three Years after the Determination of every Parliament, Writs ſhall iſſue out for a new Parliament.

E **That** within three Years at the furtheſt, after the Determination of every Parliament, legal Writs under the Great Seal ſhall be iſſued by the King, his Heirs and Succeſſors, for calling and holding another new Parliament.

No Parliament ſhall laſt longer than three Years.

F **That** no Parliament ſhall have Continuance longer than three Years, to be accounted from the Day of the Writ of Summons appointed for the holding of a new Parliament.

Parliaments to have Continance for ſeven Years, by Stat. 1 Geo. 1. cap. 38.

G **But** by an Act made 1 *Geo.* 1. *cap.* 38, entituled, *An Act for enlarging the Time of Continuance of Parliaments, &c.* it is enacted, That this preſent Parliament, and all Parliaments, that ſhall at any Time hereafter be called, aſſembled or held, ſhall and may have Continuance for ſeven Years, and no longer, to be accounted from the Day, on which, by the Writ of Summons, this preſent Parliament hath been, or any future Parliament ſhall be appointed to meet; unleſs this preſent, or any ſuch Parliament hereafter to be ſummoned, ſhall be ſooner diſſolved by his Majeſty, *&c.*

How the Wages for Knights of the Shire ſhall be levied.

32 H. 6. cap. 11.

H **The** Sheriff at the County-Court ſhall make Proclamation, That the Coroners and Chief Conſtables of the County, and Bailiffs of the Hundreds, and all others that will come, may, at the next County-Court, aſſeſs the Wages of Knights of the Shire: Whereupon an Aſſeſſment ſhall be made upon every Hundred proportionably, but not more than what the Wages come to.

A **By** an Act of Parliament made 12 & 13 *W.* 3. *cap.* 3. entituled, *An Act for preventing any Inconveniences that may happen by Privilege of Parliament*; it is enacted, That any Perſon may commence any Suit in any of his Majeſty's Courts of Record at *Weſtminſter* or in Chancery, and in all Cauſes in the Admiralty, and in all Cauſes Matrimonial and Teſtamentary, againſt any Peer or Member of the Houſe of Commons, or againſt any of their Menial or other Servants, at any Time from and immediately after the Diſſolution or Prorogation of any Parliament, until a new Parliament ſhall meet, or the ſame be re-aſſembled; and from and immediately after any Adjournment of both Houſes for above the Space of fourteen Days, until both Houſes ſhall meet, or be re-aſſembled: And that the reſpective Courts ſhall and may, after ſuch Diſſolution, Prorogation or Adjournment as aforeſaid, proceed to give Judgment, and make final Orders, and award Executions; provided that it ſhall not ſubject the Perſon of any Member of the Houſe of Commons, or any other intituled to the Privilege of Parliament, to be arreſted during the Time of the Privilege.

The Act for the preventing Inconveniences that may happen by Privilege of Parliament.

12 & 13 **W.** 3. **cap.** 3.

2 & 3 **Ann. cap.** 18.

When Privilege commences and determines.

When Proceedings to give Judgment.

No privileged Perſon to be arreſted during Privilege.

B **Nevertheleſs** any Peer may, after Diſſolution, Prorogation or Adjournment, and before any Seſſions or Meeting of both Houſes, be ſued by ſuch Proceſs out of the Courts at *Weſtminſter*, as they might have been out of Privilege-Time: So likewiſe in Caſe of the Members of the Houſe of Commons, after any Diſſolution, Prorogation or Adjournment, and before any Seſſions or Meeting of both Houſes as aforeſaid, ſuch Member or Perſon entituled to the Privilege of the Houſe, may be ſued in any of the Courts at *Weſtminſter* by Summons and Diſtreſs infinite, or by Original Bill and Summons, Attachment and Diſtreſs infinite thereupon, until he or they ſhall enter a common Appearance, or file common Bail. See the Act, How to proceed in Chancery againſt Peers and Members of the Houſe of Commons, and the King's Debtors.

How Peers and Members of the Houſe of Commons are to be ſued after Diſſolution, Prorogation, *&c.*

How to proceed in Chancery againſt Peers and Members.

C **By** an Act made 7 *W.* 3. *cap.* 4. It is enacted, That no Perſon or Perſons hereafter to be elected to ſerve in Parliament, after the *Teſte* of the Writ of Summons ſued out, or ordering of the Writ or Writs of Election, upon the calling or ſummoning of any Parliament, or after any ſuch Place becomes vacant, hereafter ſhall, or by him or themſelves, or by any other Ways or Means in his or their Behalfs, or at his or their Charge, before his or their Election to ſerve in Parliament for any County, Town, Borough, Port or Place in *England*, *Wales*, or *Berwick*, directly or indirectly give, preſent or allow, to any Perſon having a Voice or Vote in ſuch Election, any Money, Meat, Drink, Entertainment or Proviſion; or make any Preſent,

No treating after the *Teſte* of the Writ.

7 **W.** 3. **cap.** 4.

Or give any Money.

Bond or Promiſe.

Gift, Reward or Entertainment; or ſhall make any Promiſe, Agreement, Obligation or Engagement, to give or aſſure any Money, Meat, Drink, Proviſion, Preſent, Reward or Entertainment, to or for any ſuch Perſon in particular; or to any ſuch County, City, Town, Borough, Port or Place in general; or for the Advantage, Benefit, Employment, Profit or Preferment of any ſuch Perſon or Place, in order to be elected, or for being elected to ſerve in Parliament for ſuch County, City, Town, Borough, Port or Place: That every Perſon ſo giving, preſenting or allowing, making, promiſing or ingaging, doing, acting or proceeding, is thereby declared and enacted diſabled and incapacitated upon ſuch Election to ſerve in Parliament, or have any Vote or Place there.

Shall be incapacitated.

Act againſt falſe Returns.

7 & 8 W. 3. cap. 7.

By an Act made 7 & 8 *W.* 3. *cap.* 7. it is enacted, That all falſe Returns wilfully made of any Knight of the Shire, Citizen, Burgeſs, Baron of the Cinque-Ports, or other Member to ſerve in Parliament, are againſt Law, and are hereby prohibited: And in Caſe any Perſon ſhall return any Member to ſerve in Parliament for any County, City, Borough, Cinque-Port or Place, contrary to the laſt Determination in the Houſe of Commons of the Right of Election in ſuch County, City, Borough, Cinque-Port or Place, that ſuch is hereby adjudged to be a falſe Return: And that every Party grieved that ſhall be duly elected to ſerve in Parliament, may ſue the Officers in any of his Majeſty's Courts at *Weſtminſter*, for making or procuring of ſuch falſe Return, and recover double Damages, with his Coſts. A

What Remedy for the Party grieved.

Alſo, if any Perſon ſhall wilfully, falſly and maliciouſly return more Perſons than are by the Writ required to be returned; the like Remedy may be had againſt him or them, and the Party and Parties that willingly procure the ſame, and every or any of them, by the Party grieved, at his Election: Alſo there is another Clauſe to make void all Contracts, Promiſes, Bonds, and Securities, given to procure any Return of any Member to ſerve in Parliament; and whoever gives ſuch Security, ſhall forfeit 300 *l.* one Third to the King, another to the Poor of the Place, and the other to the Informer, with his Coſts; which Action muſt be brought within two Years after the Cauſe of Action aroſe. The Clerk of the Crown to keep a Book in his Office for the Entry of every ſingle and double Return, to be viewed by all Perſons deſiring to ſee it, paying a reaſonable Fee: The Forfeiture for the Clerk of the Crown not performing his Duty, is 500 *l.* This Act was by an Act 12 & 13 *W.* 3. continued for eleven Years, and from thence to the End of the next Seſſions of Parliament. B

Not to return more than is by the Writ required.

A Clauſe to make void all Contracts, Promiſes, Securities, &c. to procure a Return.

The Clerk of the Crown muſt keep a Book of all the Returns.

Forfeiture 500 *l.*

Act for the further regulating Elections.

7 & 8 W. 3. cap. 25.

A **There** is alſo another Act for farther regulating of Elections of Members to ſerve in Parliament, and for the preventing of irregular Proceedings of Sheriffs and other Officers, in the electing and returning of ſuch Members. 7 & 8 *W.* 3. *cap.* 25.

A Knight of the Shire to have 600*l.* *per Ann.* a Citizen, Burgeſs, *&c.* 300*l.* *per Ann.*

9 Ann.

B **By** an Act made 9 *Annæ*, intituled, *An Act for ſecuring the Freedom of Parliaments, by the farther qualifying of Members to ſit in the Houſe of Commons*; it is enacted, That after the Determination of that preſent Parliament, no Perſon ſhall be qualified to ſit and vote as Member for any Knight of a Shire for *England* or *Wales*, who hath not Lands, *&c.* of Freehold or Copyhold, for his own Life, or for ſome greater Eſtate in Law or Equity, to and for his own Uſe and Benefit, above the Value of 600*l.* *per Annum*, *ultra Repriſas*; nor to be a Member, and ſit or vote for any City, Borough, or Cinque-Port in *England* and *Wales*, above the annual Value of 300*l.* *ultra Repriſas*, in ſuch Manner and in ſuch Lands; and if any Perſon ſhall be elected and returned, not having ſuch Eſtate, his Election and Return ſhall be void.

Where to be void.

Not to extend to the eldeſt Son or Heir apparent of a Peer.

C **This** Act ſhall not extend to make the eldeſt Son of any Peer, or Heir apparent of any Lord of Parliament, to be uncapable of being elected.

Nor to the two Univerſities.

D **Nor** to either of the two Univerſities.

No Mortgagee ſhall be qualified who hath not been in Poſſeſſion for ſeven Years.

E **No** Perſon ſhall be qualified by Virtue of any Mortgage, whereof the Equity of Redemption is in any other Perſon, unleſs the Mortgagee ſhall have been in Poſſeſſion for ſeven Years before his Election.

Every Candidate, if required, muſt take the following Oath.

F **That** every Perſon (except as aforeſaid) who ſhall appear as a Candidate, or be propoſed to be elected to ſerve as a Member, for any County, City, Borough, or Cinque-Port in *England*, *Wales*, or *Berwick* upon *Tweed*, ſhall and is hereby enjoined upon reaſonable Requeſt (at the Time of ſuch Election, or before the Day in the Writ of Summons for the meeting of the Parliament) by any Perſon who ſhall ſtand Candidate at ſuch Election, or by any two or more Perſons having a Right to vote, to take an Oath, *That he hath truly and* Bona fide *ſuch Eſtate in Law or Equity to his own Uſe, of and in Lands, Tenements, or Hereditaments, (over and above what will ſatisfy and clear all Incumbrances that may affect the ſame) of the annual Value of* 600l. *above Reprizes, as doth qualify him to be a Member for the County of according to the Tenor and true Meaning of an Act of Parliament in that Behalf made; and that his Lands, Tenements, or Hereditaments, are lying or being in the ſeveral Townſhips or Precincts of or Pariſh, Townſhip, or Precinct of, in the County of or in the ſeveral Counties of* . And in Caſe ſuch Candidate is to ſerve for any City, Borough or Cinque-Port, then to be only the Value of 300*l.* *per Annum*, and be taken to the ſame Effect, *Mutatis mutandis*, as is before preſcribed to be taken by a Knight of a Shire.

The Oath.

Who to adminiſter the Oath.

Where to be certified.

A **The** Oath to be adminiſtred by ſuch Sheriff or Under-Sheriff, or Officer of the City, Borough, or Cinque-Port, who is to take the Poll or return the Election, or by any two or more Juſtices of the Peace; and the Perſons who ſhall adminiſter the Oath, muſt certify the taking into the Court of Chancery, or Queen's Bench, within three Months after the taking thereof, upon the Forfeiture of 100*l.* one Moiety to the Queen, and the other to the Party who ſhall ſue for the ſame, in any of the Courts at *Weſtminſter:* And if any ſuch Candidate ſhall upon reaſonable Requeſt at the Election, or any Time before the Day the Parliament is to meet, wilfully refuſe to take the ſaid Oath, then his Election and Return ſhall be void.

What Fees for adminiſtring the Oath, making the Certificate, and receiving and filing of it.

Under what Penalty.

B **And** laſtly, it is enacted, That no Fee or Reward ſhall be taken for adminiſtring ſuch Oath, or making, receiving or filing of ſuch Certificate, but one Shilling for adminiſtring of the Oath, and two Shillings for the Certificate, and two Shillings for filing and receiving of the ſame; upon the Penalty of 20*l.* to be recovered of the Offender, and divided as aforeſaid.

Proceedings.

C **How** to proceed againſt Perſons having Privilege of Parliament. *Mod. Caſes in Law and Equity* 228. 20.

Prorogation.

D **The** Difference between a Prorogation and Adjournment. 3 *Salk.* 266.

The like.

E **Where** an Order of the Houſe is determined by a Prorogation. *Ibid.*

Miſrecital.

F **Where** a private Act of Parliament is miſrecited, the Party muſt not demur but plead *nul tiel Record*; but where a publick Statute is miſrecited, he may demur. 3 *Salk.* 296, 330.

Appeals and Writs of Error.

G **Appeals** and Writs of Error ſtand good after a Parliament is diſſolved. *Ibid.*

Juſtification.

H **Of** Juſtification under an Act of Parliament. 3 *Salk.* 274.

Bail.

I **The** Parliament being diſſolved, one committed by the Houſe of Peers ſhall not be bailed. *Carthew* 132.

Judgment.

K **Judgment** given in *B. R.* and reverſed by Writ of Error in Parliament, the new Judgment muſt be given there. *Carthew* 180, 181, 319, 320.

Falſe Return.

L **Action** on the Statute for a falſe Return of a Member to Parliament. *Carthew* 232. 3 *Salk.* 200.

Private Acts of Parliament make not Judgments *ipſo facto* void.

M **Where** a private Act of Parliament declared ſuch Judgments to be void, yet they are not *ipſo facto* void; and if not pleaded to the Juriſdiction of the Court below, yet upon the Return of a *Ca. Sa.* the Act

Act of Parliament may be pleaded with the neceſſary Averments to ſet aſide the Execution. *Carthew* 274.

A **A Writ** of Error in Parliament is abated upon the Diſſolution, and *B. R.* may proceed to Execution without a *Remittitur*. *Carthew* 237.

Writ of Error.

B **An** Act of Parliament does not extend to *Ireland*, unleſs expreſly named. *Salk.* 510.

Ireland.

C **The** judicial Power of Parliament is in the Peers, and the Judgment is in the Peers, but the Judgment is virtually the King's. *Ibid.*

Judgment of the Peers.

D **The** Houſe of Peers have a double Authority, but no original Juriſdiction. *Salk.* 511.

No original Juriſdiction.

E **They** can't deprive of Peerage, and their Judgment muſt be formal. *Ibid.* 510, 511.

Their Power.

F **See** touching the *Lex Parliamenti*, and that Inheritances are not originally determinable there. *Ibid.* 512.

Inheritances not originally determinable there.

G **See** the ſeveral Kinds of Right of electing Members to Parliament. *Ibid.* 20, 21.

Rights of Election.

H **Action** lies not for refuſing to receive his Vote in the Election of Members, *per contra Holt.* *Ibid.* 19.

No Action for refuſing a Vote.

I **And** no Action lies at Common Law for a falſe Return, unleſs where the Right is determined, or cannot be determined in Parliament. *Ibid.* 502.

Falſe Return.

K **But** an Action for falſe Return lies on the Stat. 7 & 8 *W.* 3. *Ibid.* 504.

The like.

L **The** King's Courts may judge of Parliamentary Matter incidentally. *Ibid.* 503.

The King's Courts.

M **On** Commitments by the Houſe of Commons for Breach of Privilege, no Court can deliver to Bail on a *Habeas Corpus*. *Per* 3 *Contra Holt.* *Ibid.*

Bail.

N **Filing** and continuing an Original, is no Breach of Privilege. *Ibid.* 504. *Skin.* 527.

Breach of Privilege.

O **And** the Authority of the Houſe of Commons is circumſcribed by Law. *Ibid.*

Authority circumſcribed.

P **An** Act of Parliament between particular Perſons ſhall not bind Strangers. *Skin.* 97.

An Act not to bind Strangers.

Q **Upon** a long Prorogation of Parliament a Writ of Error in Parliament is no *Superſedeas*. *Ibid.* 163.

Where a Writ of Error no *Superſedeas*.

R **Acts** of Parliament muſt be conſtrued according to Law. *Ibid.* 221.

Parol Demurrer.

See { **Age.** **Infancy.** }

Parol Demurrer, what.

A **Parol Demurrer is a Privilege allowed to an Infant only, who is ſued concerning Lands which came to him by Diſcent; and the Court thereupon will give Judgment,** Quod loquela prædicta remaneat quouſque **the Infant comes to the Age of twenty-one.**

The Parol ſhall demur for an Heir only, not for a Purchaſor.

B **The** Parol ſhall not demur upon the Infancy of a Purchaſor, but for the Infancy of an Heir only: Becauſe the Law doth not allow thoſe Privileges to Purchaſors as it doth to Heirs, who are under the immediate Protection of the Law during their Infancy. *Mich. Jac.* 2. *B. R.*

Shall not demur for Infancy.

C **The** Parol ſhall not demur for Infancy in Dower. *Cro. Eliz.* 331. *pl.* 7.

Where the Parol ſhall demur.

D **Where** the Parol ſhall demur, and where not. See 3 *Rep.* 13.

Parol ſhall not demur for an Infant Demandant.
6 **E.** 1. **cap.** 2.

E **The** Tenant cannot pray, That the Parol ſhall demur, until the Infant Demandant comes of Age. 6 *Rep.* 3. *a.* This is expreſly provided for by 6 *E.* 1. *cap.* 2.

Why Parol Demurrer is granted.

F **The** granting of a Parol Demurrer is in Favour of an Infant, and for his Benefit; ſo that for want of well knowing of his Eſtate, and the Truth of the Matter, it ſhould not prejudice his Right deſcended to him from his Anceſtor: But it would be a Prejudice to him, if he ſhould be ſo delayed upon an Action brought by him in Caſe of an Eſtate diſcended to him from his Anceſtor. 6 *Rep.* 3, 5. *a.*

G **But** if his Anceſtor dies ſeized, and the Lands diſcend to him, and he enters and takes the Profits, it would be a Prejudice to the Infant to loſe the Poſſeſſion which he hath; and therefore in that Caſe it ſhall ſtay till his full Age. 6 *Rep.* 3. *b.*

In what Caſes he ſhall demur.

H **In** what Caſes an Infant ſhall have his Age; and what not. See 6 *Rep.* 3, to 5. 9 *Rep.* 84. to 86.

A **The** Parol ſhall not demur in a Writ of Aſſize, neither for the Nonage of Plaintiff or Defendant. 8 *Rep.* 50.

Shall not demur in a Writ of Aſſize.

B **Where** Age is granted, or the Parol demurs, the Writ doth not abate; but the Plea is put *ſine Die*, until his full Age. 2 *Inſt.* 258. And when he comes of Age, there ſhall be a Re-ſummons. *Raſt. Entr.* 360. *b.*

The Writ doth not abate upon a Parol Demurrer; but there ſhall be a Re-Summons.

C **A Counter-Plea** of Age is like an Eſtoppel, and therefore ought to be certain and plain to every Intent. 3 *Bulſtr.* 144.

How a Counter-Plea of Age ought to be.

D **Where** Iſſue is taken upon the Counter-Plea, and found for the Demandant, Judgment final ſhall be given, notwithſtanding the Infancy of the Tenant. 1 *Lev.* 163. *Raym.* 118.

How Judgment ſhall be where the Iſſue is found for the Demandant.

E **If** two were vouched, and the Parol demurs for the Nonage of one, it ſhall for the other alſo. 45 *Ed.* 3. 23.

Where it ſhall demur for the Nonage of one.

Parſon.

F **Parſon ſignifies the Rector of a Church, becauſe for his Time, he repreſents his Church, and ſuſtains the ſame as well in ſuing as being ſued in any Action touching the ſame.** Fleta lib. 9. cap. 18.

Parſon, who.

G **Where** a Parſon leaſes for Years, and is abſent from his Benefice above the Space of eighty Days in one Year, the Leaſe is void. 3 *Leon. Caſe* 148. Stat. 13 *Eliz. cap.* 20. *Cro. Eliz.* 490.

A Parſon abſent from his Benefice above eighty Days makes his Leaſe void.

13 Eliz. cap. 20.

H **A Parſon** takes a Benefice with Cure above 8*l.* *per Annum*, with a Diſpenſation, and afterwards takes another Benefice with Cure; the firſt is gone by the 21 *H.* 8. *cap.* 13. 4 *Leon.* Caſe 367.

A Parſon who hath a Benefice with Cure of 8*l. per Ann.* takes another Benefice with Cure; the firſt is void.

21 H. 8. cap. 13. ſect. 9.

I **The** Parſon in a *Quare Impedit*, ſays, That he is *Parſona imperſonata*, and doth not ſay, *Tempore impetrationis brevis*, and yet good; for it is inferred by the Writ brought againſt him that he is; and if he be *Perſona imperſonata* before he pleads, it is ſufficient. *Cro. Car.* 105.

How in a *Quare Impedit*, the Parſon muſt plead that he is *Parſona imperſonata.*

Againſt Spiritual Perſons taking of Farms.

By the Statute of the 21 *H.* 8. *cap.* 13. *ſect.* 1. A it is enacted, That no Spiritual Perſon ſhall take to Farm to himſelf, or any Perſon to his Uſe, any Leaſe of any Manors, Lands, Tenements, or Hereditaments for Life or at Will, upon the Forfeiture of 10 *l.* *per* Month, one Moiety to the King, the other to the Informer.

Nor ſhall buy any Merchandize, Corn, Cattle, *&c.* to ſell again.

Neither ſhall he buy to ſell again any Merchandize, Corn, Cattle, *&c.* upon Forfeiture of the B treble Value. *Sect.* 5.

What Cattle and for what Uſes he may buy.

Provided, That he may buy Horſes or any C other Cattle for his neceſſary Uſe, and for manuring of his Glebe and Church Lands. *Sect.* 6.

Partition.

See {Exchange. Partners and Partition.

Partition, what.

Partition is a dividing of Lands diſcended D by the Common Law amongſt Coheirs or Parceners, where there be two at the leaſt; whether they be Daughters, Siſters, Aunts, or otherwiſe of Kin to the Anceſtor, from whom the Lands diſcended to them: And alſo may be between Jointenants, and Tenants in Common.

How Partition is made by Agreement, and how by the Sheriff.

Where Partition is made by Agreement (unleſs E there is ſome particular Agreement to the contrary) the elder Siſter ſhall chuſe firſt, the ſecond next, *&c.* but where the Sheriff is to make Partition, there he may aſſign the Part to the youngeſt firſt, and to the eldeſt laſt, if he pleaſeth: For the Writ doth not command him to give any Preference to the elder Siſter, but only to make equal Partition.

How Partition of Lands muſt be made.

A Partition of Lands ought to be made accord- F ing to the Quality and the true Value of the Lands, and not according to the Quantity or equal Number of Acres: *Hill.* 22 *Car. B. R.* For the Partition ought to be equal in Value, which is ſo in the former, but may not be ſo in the latter, *viz.* the Diviſion by Equality of Acres; for ſome Land is of greater Value than other.

A **A Partition** may be of any Eſtate of Freehold, or for Term of Years, or uncertain Intereſt, or at Will, of the Manors, Lands, Tenements or Hereditaments, whereof the Partition is demanded: See the Manner of ſuing of it, and the particular Directions given by the Statute, intituled, *An Act for the eaſier obtaining Partitions of Land in Coparcenary, Jointtenancy, and Tenancy in Common*, Stat. 8 & 9 *W.* 3. *cap.* 31. This Act was temporary, but now made perpetual by 3 & 4 *Annæ*, *cap.* 18.

Of what Eſtates a Partition may be, by the Act of 8 & 9 **W.** 3. **cap.** 31.

3 & 4 **Ann. cap.** 18.

B **If** Coparceners, Jointenants, or Tenants in Common, ſeized of any Eſtate of Inheritance in the Advowſon of any Church or Vicarage, or other Eccleſiaſtical Promotion, and a Partition be made between them to preſent by Turns; then every one ſhall be adjudged to be ſeized of his or her ſeparate Part of the Advowſon to preſent in his or her Turn: As if there be two, and they make Partition, each ſhall be ſaid to be ſeized, the one of the one Moiety to preſent in the firſt Turn, and the other of the other Moiety to preſent in the ſecond Turn; and ſo where there are more than two.

How Coparceners ſhall preſent to an Advowſon.

7 **Ann.**

C **Note,** No Plea in Abatement in Partition ſhall be admitted, nor ſhall it abate by Death. *Ibid. Sect.* 3. See the Statute, how it is to be executed.

Shall not abate for Death.

Shall be no Plea in Abatement.

D **Partition** of Lands of Inheritance to be made by Parceners, Jointenants, or Tenants in Common, muſt be made by Writ or Deed, and cannot be made by Parol. See *Dy.* 350. *b. pl.* 20. *Benl.* 260.

How Partition muſt be made.

E **One** Coparcener cannot avow for the Moiety of the Rent before Partition. 5 *Mod.* 141.

One Coparcener cannot avow for the Moiety of the Rent before Partition.

F **Where** Part of one Parcener's Eſtate is evicted for Life, that ſhall defeat the intire Partition. *Cro. Eliz.* 902. *pl.* 6. 903. See Title **Exchange.**

Where Part of one Parcener's Eſtate is evicted, defeats the Partition.

G **A Man** ſeized of Lands in Fee, had only two Daughters, and deviſes all his Lands to one of his Daughters, and her Heirs: Here the Deviſee ſhall have the Whole: For where-ever a Deviſe is of the whole Land to an Heir, there the Deviſe ſhall be void, becauſe he is in by Diſcent, which is his better Title; but where Part is deviſed to the Heir, there he ſhall take by Purchaſe. *Hill.* 1 *Annæ*.

Where, upon a Deviſe to one of his Daughters and Heirs, ſhe ſhall have the Whole.

Where Part being deviſed, ſhe ſhall take by Purchaſe.

H **Partition** brought by Tenant in Fee of one Moiety, againſt Tenant for Life of the other Moiety. *per* 32 *H.* 8. *cap.* 32. *Lutw.* 1018.

Partition brought by Tenant in Fee, againſt Tenant for Life.

32 **H.** 8. **cap.** 32.

I **If** there be three Coparceners of a Manor who make Partition, every of them ſhall have a Manor and a Court-Baron within her Purparty. 26 *H.* 8. 4. *Davis*'s *Rep.* 61. *b.*

Three Parceners make Partition, each ſhall have a Manor, and a Court-Baron.

How the Count ought to be in the Caſe of Tenants in Common.

A **Error** was aſſigned that in the Count it was ſet forth, That *Inſimul & pro indiviſo tenet cum Def.* and it is not ſaid what Eſtate: Several Precedents were quoted to make it good; but it was ſaid, that Tenants in Common ought to ſhew it in their Count. 3 *Leon.* Caſe 312.

Judgment.

B **Where** the Judgment in Partition is not removed by a Writ of Error. 3 *Salk.*

Tenants in Common.

C **Tenants** in Common were not compellable to make Partition before the Statute. *Ibid.* 208.

Advowſon.

D **Partition** may be made by Joint-tenants of an Advowſon by Deed of Covenant between themſelves. *Carthew* 505.

Partners, Part-Owners, and Partition.

See **Partition.**

Partners, who.

E **Partners are where two or more agree to come in Share and Share alike to any Trade or Bargain.**

Part-Owners, who.

F **Part-Owners are only thoſe who are concerned in Ship Matters.**

Two Partners, Judgment only againſt one, only his Part ſhall be taken in Execution.

G **Two** Partners in a Trade, and Judgment is recovered againſt one of them; his Moiety of the Goods in Partnerſhip only, ſhall be taken in Execution. *Show. Rep.* 174.

Covenant upon Articles by one Partner againſt the other.

H **Covenant** brought upon Articles by one Partner againſt the other, and ſeveral Breaches aſſigned, ſome found for the Plaintiff, and ſome for the Defendant; and ſo of the Demurrers. *Lutw.* 877. *a.*

Partition by Tenant in Fee, againſt Tenant for Life of another Moiety.

32 **H.** 8. **cap.** 32.

I **Partition** brought by Tenant in Fee of one Moiety, againſt Tenant for Life of the other Moiety. *Per* Stat. 32 *H.* 8. *cap.* 32. *Ibid.* 1018.

The Statute for the more eaſy ſuing out of Writs of Partition.

8 & 9 **W.** 3. **cap.** 31.

K **See** the Statute, *For the more eaſy ſuing out of Writs of Partition*, with the Manner of ſuing of them out, and making of Partition. 8 & 9 *W.* 3. *cap.* 31. See Title **Partition.**

A **Where** there are Part-Owners of a Ship, the Majority may ſend her out, without the Conſent of the reſt: And if they do, the Majority run all the Hazard, and they muſt partake of the Profit. *Show. Rep.* 13, 30.

The Majority of Part-Owners may ſend the Ship out.

B **An** Action will lie as well againſt the Part-Owners of a Ship, for the Loſs or Spoiling of Goods delivered to the Maſter, as againſt the Maſter: But if it be brought againſt the Part-Owners, it muſt be brought againſt all of them, or elſe the Defendant may take Advantage of it, by Pleading in Abatement, or upon the General Iſſue. *Ibid.* 30, 105.

An Action lies as well againſt the Part-Owners, as the Maſter.

Where are ſeveral Part-Owners, an Action for Loſs of Goods lies againſt the Maſter, or all of them.

C **A Maſter** of a Ship is chargeable in reſpect of his Wages, and ſo are the Part-Owners in reſpect of the Freight they receive for the Portage of the Goods, at the Plaintiff's Election: But the Action againſt the Part-Owners muſt be brought againſt all of them. 3 *Lev.* 259.

Where the Maſter is chargeable, and where the Part-Owners.

Party and Privy, See **Privies and Privities.**

Patron.

See **Preſentment to a Church.**

D **Signifies him who hath the Gift of a Benefice; and the Reaſon is, becauſe the Gift of Churches and Benefices belonged unto ſuch good Men, as either built or elſe endowed them with great Part of their Revenue.**

Patron, who.

E **Of** an Avoidance by Reſignation or Deprivation, the Patron ſhall have ſix Months Time after Notice given him, to preſent his Clerk, becauſe it may be ſecretly done in the Chamber of the Ordinary: But where the Church becomes void by the Death of the Incumbent, there the Patron is to take Notice of it at his Peril. 3 *Leon.* Caſe 66. *fol.* 46.

Where Notice is to be given to the Patron, and where he is to take Notice at his Peril.

The three Cauſes of Patronage.

There are three Cauſes of Patronage.

1. *Ratione fundationis*, where one ſolely founds a Church. A
2. *Ratione donationis*, when one only endows it.
3. *Ratione fundi*, when a Man erects a Church upon his own Soil. *Lit. Rep.* 137.

Where a Patron may revoke his Preſentation.

A Patron may revoke his Preſentation before Inſtitution. *Latch.* 192. B

Pawn, See **Pledges and Pledge.**

Payment.

See **Acceptance.**
Diſcharge.
Pleas and Pleadings.

Security ought to precede Payment.

Security ought to precede Payment. *Chanc. Rep.* 294. C

Payment the 30th of *Febr.* ſhall be Payment preſently.

Payment at an impoſſible Day, as the 30th of *Febr.* ſhall be Payment preſently. *Latch* 4. *Gibbon* and *Purchaſe*. D

Payment before the Day, is Payment at the Day.

How to plead it.

Payment of Money before the Day of Payment appointed, is in Law a Payment at the Day: For it cannot be in Preſumption of Law any Prejudice to him to whom the Payment is made, to have his Money paid before the Time; and if it be paid before the Day, it is paid at the Day; and it appears by the Receipt of it, that it is for his own Advantage to receive it then. The Defendant muſt not plead, That the Plaintiff accepted it in full Satisfaction; but he muſt plead, That he paid it in full Satisfaction. 5 *Rep.* 117. E

How Payment is to be pleaded when it is in the Disjunctive.

Where a Man is bound to pay his Rent at four Feaſts, or within ten Days after every Feaſt, or within ſix Months, Payment generally is no Plea: For he hath his Election at which of the Days to pay it, it being in the Disjunctive. *Cro. Car.* 421. *pl.* 13, 422. F

A **A Man** had four Daughters, and ſettles his Eſtates to the Uſe of his Daughters, until every one of them ſucceſſively ſhall or may have levied five hundred Pounds a-piece for their Portions; Remainder to the Son: The Son enters and holds the Eſtate longer than the eldeſt Daughter might have received her Part, and then ſhe entered: And adjudged, That ſhe could not in Prejudice to her other Siſters: But they held, That ſhe had a Remedy againſt her Brother (I ſuppoſe in Chancery) who had receiv'd the Profits. *Cro. Eliz.* 800. *pl.* 53.

Where five hundred Pounds a-piece is to be raiſed by three Daughters for their Portions ſucceſſively, one muſt not delay to do it in Prejudice of the others.

B **Upon** *Solvit ad Diem* pleaded, it is good Evidence to prove Payment at any Time after the Day, and before the Action brought: For if the Money were paid and accepted by the Plaintiff, he had no Reaſon to bring his Action. See the Statute 4 & 5 *Annæ*.

Payment after the Day, and before the Action brought, is good.

4 & 5 **Annæ.**

C **Payment**, though after the Day, may be pleaded to any Action of Debt, upon Bill, Bond or Judgment, or *Sci. Fa.* upon a Judgment, by Stat. 4 & 5 *Annæ*. See Title **Pleas.**

Payment after the Day, where good.

4 & 5 **Annæ.**

D **How** to aſſign a Breach, where Money is to be paid after the Receipt. *Lutw.* 472, 473.

How to aſſign a Breach, where Money is to be paid after the Receipt.

E **Where** Money is to be paid upon Notice, it ſhall not be loſt for want of Notice; but no Notice may be pleaded in Abatement. *Ibid.* 404.

Where Money is to be paid upon Notice.

F **How** Conditions of Bonds are to be pleaded to be performed where Money is to be paid, or ſome Collateral Matter to be done. *Keilw.* 74. *b.* 75. *a.*

How to plead to Bonds where Money paid, or ſome collateral Thing done.

G **Where** the Word *Paying* in a Will makes a Condition, and where not. See Title **Deviſe.**

Where the Word *Paying* makes a Condition.

H **Payment** of a leſſer Sum in Satisfaction of a greater, cannot be any Satisfaction for the Whole, unleſs the Payment be before the Day: But the Gift of an Horſe or Robe, &c. in Satisfaction, is good. 5 *Rep.* 177.

Payment of a leſſer Sum, not good, unleſs before the Day.

But of a Collateral Thing it is.

I **Where** Money is to be paid upon a Condition to Heirs, Executors or Adminiſtrators, and the Aſſigns are not named, it cannot be paid to the Aſſignee. 5 *Rep.* 96. *b.*

To whom Money is to be paid.

K **Payment** of Money ſhall always be directed by him who pays the Money, not by him who accepts it. 5 *Rep.* 117. *b. Cro. Eliz.* 68. *pl.* 19. For every one ought to interpret the Intention of his own Act, and not another for him. *Mich.* 150. *B. S.*

By whom Payment ſhall be directed.

Payment by the Borrower to the Scrivener, ſhall not conclude the Lender.

A **Money** was paid by the Borrower to the Scrivener who procured the Money, without taking up of the Security: And held, That in regard the Lender kept the Security, Payment to the Scrivener ſhould not conclude him. *Rep.* 93, 94, and 111.

Payment in Taxes, and in Repairs.

B **Payment** of Taxes, or Money laid out for Repairs, where good, in an Action of Debt for Rent, See Title **Rent.**

Executor.

C **An** Executor may pay Debts of a higher Nature after a Decree *Quod Computet.* *Salk.* 507.

Decree.

D **But** *aliter* after a final Decree, for ſuch Decree is in Nature of a Judgment. *Ibid.*

Money paid to a third Perſon.

E *A.* receives Money of *B.* by the Hands of *C.* 'tis *A*'s Money, and he muſt bear the Loſs by *C.* *Ibid.* 508.

Money ſtolen.

F **So** if *A.* receives Part of a Sum, and puts it in a Bag, and while counting the Reſidue, the Bag is ſtolen. *Ibid.*

Payment to a Bond.

G **Payment** to a Bond with Condition endorſed, is a good Plea before Breach. *Ibid.*

The like.

H **But** not after Breach, for the Benefit of the Condition is loſt by the Breach. *Ibid.*

Payment of Part.

I **Payment** of Part, and Acquittance pleaded, *Puis darrein Continuance* is in Bar. *Salk.* 519.

Accord with Satisfaction.

K **Money** paid on a void Award may be pleaded as an Accord with Satisfaction. *Ibid.* 71.

Money to be paid at ſeveral Times.

L **Where** a Sum of Money is agreed to be paid at ſeveral Times, an Action lies for the Whole on a Failure at any one Time. *Mod. Caſes in Law and Equity*, 56, 57.

Payment in Diſcharge of Intereſt.

M **Money** was paid on a Bond as Principal, yet taken to be in Diſcharge of Intereſt. *Ibid.* 242.

Payment preſumed.

N **Debt** on a Bond of 35 Years ſtanding, on *Solvit ad diem* pleaded, Payment ſhall be preſumed, *Ibid.* 278.

Indorſement of Intereſt.

O **If** an Indorſement of Intereſt paid be Evidence of ſuch Payment. *Ibid.* 279, 280.

Payment before the Day.

P **Where** Payment before the Day is Payment at the Day. *Ibid.* 345.

Peace. See **Juſtice of Peace.**

Penalty and Penal Laws.

See **Payment.**

The Spiritual Court cannot proceed for the Penalty upon a Penal Statute.

A **The** Spiritual Court may hold Plea of a Thing prohibited by a Statute upon a Penalty; ſo that they proceed not upon the Penalty. 2 *Lev.* 222.

In Debt for Performance of Covenants, Plaintiff ſhall recover the whole Penalty.

But Equity will relieve, and how.

B **If** a Man bring an Action of Debt upon a Bond for Performance of Covenants, the Plaintiff ſhall recover the whole Penalty of his Bond, becauſe in Debt the Judgment muſt be according to the Demand, and the Demand muſt be for the whole Penalty; for it is the Defendant's Folly, after he hath obliged himſelf, not to take Care to perform the Condition. But upon the Defendant's bringing of his Bill in Equity, and praying of an Injunction to the Suit at the Common Law, the Court of Equity uſually grant it till the Hearing of the Cauſe; and upon the Hearing of the Cauſe, they uſually continue the Injunction farther, and order a Trial at Law upon *Quantum dampnificatus*, for the Jury to find (for a Court of Equity cannot do it) how much Damage the Plaintiff received by reaſon of the Breach of the ſeveral Covenants; and they farther Order, That after ſuch Verdict given at the Common Law, both Parties ſhall reſort back for the Decree of that Court: So that here is firſt an Action brought upon the Bond at the Common Law, then a Decree in Chancery for a Trial at Law, after that an Action at the Common Law, to try the *Quantum dampnificatus*; and after that upon the Return of the *Poſtea*, and Reading of it in the Court of Equity a final Decree, whereas a bare Action of Covenant at the Common Law (without ſuing for the Penalty of the Bond) would have made an End of the Buſineſs in leſſer Time, and for a much leſſer Charge.

The ſeveral Kinds of Penal Laws.

C **There** are three Kinds of Penal Laws, *Pœna Pecuniaria*, *Pœna Corporalis*, and *Pœna Exilii*. *Cro. Jac.* 415.

Perambulation.

See **Pariſh.**

Perambulation, what.

Perambulatione Facienda is a Writ which lies where two Lordſhips lie near together, and ſome Encroachments have been made of a long Time; then by the Aſſent of the Lords, the Sheriff ſhall take with him the Parties and Neighbours, and ſhall make a Perambulation, and ſettle the Bounds as they were before: Alſo there is another Perambulation; and that is, for the Miniſter, Church-Wardens, and Pariſhioners, to go round their Pariſh once a Year, in or about Aſcenſion-Week. A

A Perambulation is juſtifiable.

Pariſhioners may well juſtify their going over any Man's Land in their Perambulation, according to their Uſage; and may abate all Nuſances in their Way. *Cro. Eliz.* 444. *pl.* 3. B

Cuſtom to find Cakes and Ale at a Perambulation, is naught.

A Cuſtom for Farmers to find Cakes and Ale at a Perambulation, is naught; for it is no more than a Preſcription in Occupiers, which is not good in a Matter that charges the Inheritance. 2 *Lev.* 164. C

Peremptory.

Peremptory, what.

A Peremptory, is when a Buſineſs is by a Rule of Court to be ſpoken unto at a preciſe Day; and if it cannot be ſpoken unto then, by Reaſon of other Buſineſs of the Court, the Court in ſuch Caſes doth uſe, at the Prayer of the Party who is concerned, to diſpence with the not ſpeaking to it at that Time, and doth not give the Party farther Time to ſpeak to it, without Prejudice to him; and this is called the putting off of a Peremptory: And this is uſed to be moved by Counſel at the Riſing of the Court, and is granted of Courſe. D

A By the Rules of the Court a Peremptory Day to ſhew Cauſe why the Judgment ſhould not be affirmed, is not to be given to the Defendant upon a Writ of Error brought to reverſe a Judgment given againſt him, upon a *Non ſum informatus*, or Judgment by Default at the firſt Reading of the Record; but the Court will appoint a Day to hear Counſel: For ſuch a Judgment is not ſo much favoured as a Judgment upon a Verdict. *Mich.* 22 *Car.* 1. *B. R.*

Peremptory-Day not given the Defendant to ſhew Cauſe, *&c.* at the firſt Reading of the Record.

B If the Defendant do tender an Iſſue in Abatement of the Writ, and the Plaintiff doth demur upon the Iſſue, and upon arguing of the Demurrer the Iſſue is over-ruled, that is, it is adjudged by the Court to be no good Iſſue; the Court will give the Defendant a Day over to anſwer peremptorily, that is, to plead a Plea to the Merits of the Cauſe, the former Plea, which was over-ruled, being only in Abatement of the Writ, and nothing at all to the Merits of the Cauſe, for that never came in Diſpute: *Trin.* 24 *Car.* 1. *B. R.* But otherwiſe it is, where ſuch an Iſſue and Demurrer is in Bar of the Action; for there the Merits of the Cauſe are put upon it.

If Defendant tender an Iſſue in Abatement of the Writ, and the Plaintiff demurs, and the Iſſue is over-ruled: The Court will give the Defendant a peremptory Day to plead to the Merits.

Aliter, if the Iſſue and Demurrer were in Bar of the Action.

C If a peremptory Day be put off by the Court, the Party that will take Advantage by the putting it off, ought to enter the Rule of the Court that was made for the putting it off. *Trin.* 1651. *B. S.*

How to take Advantage of the putting off of a peremptory Day.

Perjury.

See { Evidence.
Oath.
Witneſs.

D A Falſe Oath taken before a Perſon that hath not Authority by Law to give the Party his Oath in that Cauſe wherein he is depoſed, is not Perjury: 21 *Car.* 1. *B. R.* For the Oath is *Coram non Judice*, and it is as if no ſuch Oath had been made.

Falſe Oath taken before a Perſon who has no Authority to give it, is not Perjury.

Indictment lies for taking a falſe Oath raſhly, tho' without Malice.

An Indictment for Perjury may be preferred againſt one for taking a falſe Oath raſhly, and for want of Conſideration, although the Party that took the Oath did not do it maliciouſly; and he may be convicted thereupon: But the Fine ought to be more moderate where the Perjury is committed out of Raſhneſs only, than where it is committed maliciouſly: *Trin.* 24 *Car. B. R.* For tho' the Law doth not tolerate Offences, even when they are committed out of Infirmity; yet it hath Regard to the Weakneſs of a Man, and will not therefore puniſh them ſo ſeverely as Offences committed upon premeditated Malice to the Party againſt whom they are committed. *Quære*, If this, not being voluntary Perjury, is within the Statute? A

No Indictment lies for a falſe Oath, if the Party receives no Damage.

Where a Man makes a falſe Oath, which is nothing to the Purpoſe in the Cauſe, and the Party againſt whom the Oath is made receives no Damage thereby, there lies not Indictment for it: For it would be very hard to make a Man ſuffer for that which hurts no Body. B

Witneſs.

Perjury may be given in Evidence to the Credit of a Witneſs. *Salk.* 514. C

But a Man ought not to be drawn into a conſtructive Perjury. *Ibid.* D

Charge to be certain.

The Charge thereof ought to be equally certain whether at Common Law or on the Statute. *Ibid.* E

Diſability on the Statute.

Yet on Conviction thereof on the Statute, Diſability is Part of the Judgment. *Ibid.* F

By the Common Law.

But on a Conviction at Common Law, Diſability is only the Conſequence of the Judgment. *Skinner* 578. G

Pardon.

And the King may pardon a Diſability where only the Conſequence of a Judgment. *Salk.* 689. H

Pardon.

But not where Part of the Judgment; yet a Statute will pardon both. *Ibid.* I

Here puniſhable.

How 'tis puniſhable, and where the Offender may be indicted, where not. *Salk.* 269, 270. K

Information.

An Objection to an Information for a Perjury, not allowed. 3 *Salk.* 199. L

New Trial.

There can be no new Trial on an Indictment for Perjury. 3 *Salk.* 362. M

Indictment.

Where an Indictment for Perjury was held to be laid too General. *Carthew* 421. N

Perjury in an Anſwer in Chancery.

Indictment of Perjury in an Anſwer in Chancery, Ruled, That if the Bill be diſmiſſed in Chancery, the Complainant there is a Witneſs, otherwiſe he is not; and the Bill taken off the File is no Evidence, tho' a Copy made whilſt the Bill was on the File may be read; but there being only Oath againſt Oath the Defendant was acquitted. *Skinner* 827. O

What is Perjury.

Perjury ought to be alledged in a Thing material; but if it has any certain Relation, it ſuffices. *Comb.* 460, 61. P

Perpetuity.

A **A Perpetuity is where if all that have Intereſt join, yet they cannot bar or paſs the Eſtate: But if by the Concurrence of all, having the Eſtate-Tail, it may be barr'd, it is no Perpetuity.** Chanc. Rep. 213.

A Definition of a Perpetuity.

B **It** is a Rule that hath deſtroyed Perpetuities, That an Eſtate cannot be made to ceaſe for a Time, and then to riſe again; or to ceaſe as to one Perſon, and have Being as to another; or to deprive a Tenant in Tail by Condition or Limitation of the Power of Alienation. *Hob.* 257.

A Rule that deſtroys Perpetuities.

C **They** are odious in the Law. See 1 *Rep. Corbet*'s Caſe, and *Chudleigh*'s Caſe.

Perpetuities are odious in the Law.

D **A Proviſo** to ceaſe an Eſtate limited to a Man, and the Heirs Males of his Body, as if the Tenant in Tail were dead, is repugnant, impoſſible, and againſt Law. 1 *Rep.* 84. *a.* *&c.* to 88. *Moore*, Caſe 495.

Perpetuities void and repugnant.

E **A Limitation** in Reverſion of a Term to ſeveral Perſons *in eſſe*, doth not extend to the Creation of a Perpetuity; but otherwiſe it is to Perſons not *in eſſe*. *Chanc. Rep.* 8.

Limitation of a Reverſion of a Term to Perſons *in eſſe*, makes no Perpetuity.

F **Where** the Limitation of a Term for Years tends to Perpetuity, where not. *Carthew* 266.

Limitation.

G **Deviſe** of a Term to *A.* and the Heirs Males of his Body; and if he die without Iſſue, leaving *B.* then to *C.* this is a good Deviſe to *C.* on the above Contingency. *Comberb.* 208.

What a good Deviſe.

H **Yet** an Executory Deviſe to commence after the Death of one without Iſſue, is not good. *Ibid.* 483.

Executory Deviſe.

I **A Term** for Years is deviſed to *A.* for Life, Remainder to the Heirs of the Body of *A.* it was adjudg'd in Parliament, that after *A*'s Death, his eldeſt Son ſhou'd take by Purchaſe. *Ibid.* 447.

When the Heir ſhall take by Purchaſe.

K **For** Caſes of Perpetuities, ſee *Moore*, Caſe 868. and the Doctrine of Perpetuities, call'd the Duke of *Norfolk*'s Caſe.

Pertaining.

See **Appurtenant.**

What Things may be appurtenant, and what not.

A **Preſcription** doth not make any Thing appendant or appurtenant, unleſs the Thing appendant or appurtenant agree in Quality and Nature to the Thing whereunto it is appendant or appurtenant: As a Thing corporeal cannot properly be appendant to a Thing corporeal; nor a Thing incorporeal to a Thing incorporeal: But Things incorporeal which lie in Grant, as Advowſons, Commons, *&c.* may be appendant to Things corporeal, as a Manor, Houſe or Land, *&c.* *Co. Lit.* 121. *b.*

Pigeon-Houſe and Pigeons, ſee **Nuſance.**

Pie-Powder Court, ſee **Courts.**

Pirate, ſee **Felon and Felony, Trials.**

Plaint.

See **Aſſize.**

Plaint, what.

B **Plaint is the Entry of an Action in an inferior Court, and is after this Manner:** *A. B.* queritur verſus *C. D.* de placito tranſgreſſionis, & ſunt pleg' de proſequendo, ſcilicet, Johannes Doe & Richardus Roe.

A **A Plaint is likewiſe the Cauſe for which the Plaintiff doth complain to the King againſt the Defendant, and for which he doth obtain his Writ: For as the King denies his Writ to none, if there be Cauſe to grant it, ſo he grants not his Writ to any without there be Cauſe alledged for it; for as the King is bound to help them to Right that ſuffer Wrong, ſo he is bound (as much as in him lies) to defend his People from cauſeleſs Vexation.**

B **A Plaint** in an inferior Court, is in the Nature of an original Writ: *Paſch.* 1652. *B. S.* For therein is briefly ſet forth the Plaintiff's Cauſe of Action.

A Plaint is in Nature of an original Writ.

C **Where** a Plaint is levied in an inferior Court, the Defendant muſt be diſtrained but by a Pewter-Diſh or Kettle, *&c.* or ſome other little Thing of ſmall Value (not exceeding 10 *s.*) at firſt; and if he doth not appear, then a farther Diſtreſs to a greater Value, and ſo on till he appears; but the Plaintiff muſt not upon the firſt Diſtreſs, ſweep away all the Defendant's Goods; if he doth, this Court will grant an Attachment againſt him, and alſo againſt the Officers who made the Diſtreſs.

How to proceed on a Plaint in an inferior Court.

D **The** firſt Proceſs in an inferior Court, is a Plaint; upon which Plaint there iſſues a *Pone*, and until the Return of a *Nichil* upon the *Pone*, a *Capias* will not lie againſt the Body of the Defendant.

The firſt and ſubſequent Proceſs in an inferior Court.

E **How** to plead a Plaint in an inferior Court of Record, and Judgment thereupon, where the Corporation is altered from Bailiff to Mayor. 3 *Lev.* 243. See Title **Corporation.**

How to plead Plaint and Judgment, where the Corporation is altered from Bailiff to Mayor.

F **The** Plaintiff in an Aſſize may abridge his Plaint of any Part whereunto a Bar is pleaded. 21 *H.* 8. *cap.* 3. See Title **Aſſize.**

Where the Plaint in an Aſſize may be abridged.

21 H. 8. cap. 3.

Pleas and Pleadings.

See
Abatement. Jeofails. Oyer.
Officer. Replication. Traverſe.

Pleadings, what.

A **Pleadings are all the Matters which come after the Declaration, as well on the Defendant's as the Plaintiff's Side, until Iſſue or Law in Fact is joined.**

A Plea muſt be either in Bar to the Action, or in Abatement of the Writ.

B **Every** Plea muſt be pleaded either in Bar to the Action brought, or in Abatement of the Writ upon which the Action is framed; otherwiſe it is but a Diſcourſe and not a Plea, becauſe the Plaintiff cannot take an Iſſue upon it; and therefore if the Plaintiff do demur upon it, and his Demurrer be judged good, he ſhall have Judgment againſt the Defendant for want of a Plea. *Paſch.* 23 *Car. B. R.*

When Pleas in Abatement muſt be pleaded.

C **Pleas** in Abatement muſt be pleaded within the four Days after the Rules to plead are given, unleſs the Defendant craves a ſpecial Imparlance; which if he doth the Manner is thus, To pay the Plaintiff's Attorney two Shillings to enter a ſpecial Imparlance, which is entered with a *ſalvo* to the Defendant of all Exceptions *tam ad breve* (if by Original) *quam ad narrationem*; and he may plead in Abatement at the End of the eight Days Rule.

If in a Plea in Abatement Defendant pleads a Falſity, Plaintiff ſhall have Judgment.

D **If** upon a Plea in Abatement the Defendant pleads that which is falſe, and Iſſue is taken thereupon and found for the Plaintiff; this ſhall be fatal to the Defendant, and the Plaintiff ſhall have his Judgment; but if the Plaintiff demurs to his Plea, and hath Judgment upon the Demurrer for him, the Judgment is *quod defendens reſpondeat ulterius in Capite*, ſuch a Day, which is the Day in the Rule given by the Court; but if the Defendant hath Judgment, then there is a *Nil capiat per billam* entered: But *Note*, In all theſe Caſes where

Judgment is given by the Court for the Defendant upon a Demurrer, he recovers no Coſts againſt the Plaintiff, it being *Caſus omiſſus* out of the Statute. But ſee the late Act, *For the Amendment of the Law*, for Coſts for Inſufficiency upon Demurrer joined.

If Judgment be given for the Defendant on Demurrer, he ſhall have no Coſts.

Where a Dilatory Plea is pleaded.

Where he ſhall not amend.

A **If** the Defendant pleads a Dilatory Plea, the Court, at the Plaintiff's Motion, will order him to plead ſuch a Plea by ſuch a Time as he will ſtand to: And if he be ordered to put in a Plea as he will ſtand to, and he do it accordingly, if ſuch his Plea be not good, the Court will not permit him to amend it, but the Plaintiff ſhall take Advantage of it, by demurring upon it, or otherwiſe, as he ſhall be adviſed: Becauſe he hath abuſed the Favour of the Court in granting him Time to put in his Plea, which they intended ſhould be a good Plea.

How it is where in a Paper-Book upon an Iſſue joined (not upon a Demurrer) Notice of a Trial is given: But if on a Demurrer, it cannot.

B **But** where there is a Paper-Book made up, the Defendant hath four Days to join in Iſſue, *viz.* To pay the Plaintiff for the Entry of what is his Part; and at the End of the four Days, may, if he thinks fit, wave the Special Pleading, and plead the General Iſſue: But if the Paper-Book which is delivered to the Defendant's Attorney is made up with an Iſſue joined, the Plaintiff's Attorney may, upon the Delivery thereof, give eight Days Notice of Trial; but the Defendant's Attorney may, if he thinks fit, within four Days ſtrike out *Et prædict. defendens ſimiliter, &c.* and put in a Demurrer to the Plaintiff's Rejoinder or Replication: But if the Defendant joins in the Iſſue, by paying for the Entry of his Part, or plead the General Iſſue thereto, then the Trial ſhall go on according to the Notice given upon the Delivery of the Paper-Book: But if it be a Rejoinder in Demurrer in the Paper-Book, and not an Iſſue; there, although the Defendant at the four Days End waves his Demurrer, and pleads the General Iſſue; yet the Plaintiff's Attorney cannot give Notice of Trial upon Delivery of the Paper-Book, becauſe no Iſſue in Fact was then joined: So that if the Defendant will not at the four Days End join in Demurrer, but pleads the General Iſſue, the Notice of Trial muſt be given but from the Time of his pleading of the General Iſſue.

But not where the Iſſue is entered.

C **Where** a Plea is pleaded, and the Iſſue is entered, and the Record made up to be tried at the Aſſizes, the Defendant cannot amend his Plea in this Caſe, without the Conſent of the Plaintiff, and an Order of Court; becauſe his Plea is entered upon Record. *Mich.* 8 *W.* 3. *B. R.*

A Judge will ſet aſide a frivolous Plea pleaded after Term to delay the Plaintiff.

D **If** the Defendant do after the Term is ended plead a frivolous Plea, to the Intent to delay the Plaintiff, and to hinder him from going to a Trial at the Aſſizes, a Judge at his Chamber will ſet aſide ſuch Plea, and order the Defendant to plead ſuch a Plea as he will ſtand to, or elſe to accept of a Demurrer from the Plaintiff unto his frivolous Plea: *Hill.* 22 *Car. B. R.* For it is the Juſtice of of the Court to ſpeed the Proceedings in Law, and to bring Suits to Determination as ſoon as with Conveniency and Juſtice to all Parties it may be done.

What Notice Defendant muſt have to plead, if the Cauſe have continued four Terms without Proſecution.

If a Cauſe have continued four Terms without Proſecution before Iſſue joined, the Defendant is to have a Term's Notice to plead, *&c.* before Judgment can be entred by Default; if after Iſſue joined, a Term's Notice before the Trial. *Per Magiſtrum Liveſay & alios, &c. Paſch.* 21 *Car.* 2. A

Defendant muſt plead the general Iſſue ſo as the whole Matter may come in Queſtion.

Where the Defendant may plead the general Iſſue, he ought ſo to plead, that the whole Matter in Queſtion may come to be tried: *Paſch.* 23 *Car. B. R.* For elſe the Plea is not good, becauſe it tenders not ſuch Iſſue whereupon the Cauſe depending may be determined, which every Plea ought to do; for to plead otherways is to no Purpoſe; and if the Defendant's Plea doth not anſwer the Plaintiff's whole Declaration, the Plaintiff may well demur. B

How Defendant muſt plead to an Action on a Promiſe to perform a Contract.

If one bring an Action upon a Promiſe to perform a Contract, the Defendant ought not to plead Performance of the Contract, or *quod ipſum exoneravit* of the Contract, but he muſt plead *Non aſſumpſit* only; for if at the Trial he proves Performance of the Contract, then the Plaintiff's Action is gone; and whenever the Action is gone, *Non Aſſumpſit* is a good Plea. C

When to plead where the Court orders to plead *Forthwith*, and when if *Inſtanter*.

When the Court doth order one to plead *Forthwith*, it is to be underſtood that he ſhall plead in ſuch convenient Time after, as the Court ſhall judge reaſonable; but if it be *Inſtanter*, then he muſt plead the ſame Day: *Mich.* 22 *Car. B. R.* For the Law accounteth Things which are done in convenient Time, to be done without Delay. D

When the Defendant may amend his Plea.

The Defendant may amend his Plea, although it be three Terms after it was pleaded, if it be not entred, and he will pay Coſts: *Mich.* 22 *Car. B. R.* But it muſt be by Leave of the Court, becauſe it is againſt the common Rules of Practice; which they will grant if there be cauſe for it. E

Plea in Abatement ought not to be received after Imparlance.

For a Plea in Abatement of the Writ or Bill ought not to be received after the Defendant hath imparled, for by imparling he admits the Writ or Bill to be good; yet if it be received, and the Plaintiff doth demur to it, the Demurrer is good: *Trin.* 24 *Car. B. R.* For the Plaintiff accepting of the Plea after Imparlance, it is no Prejudice to the Defendant, and therefore it is but Reaſon that he ſhould take Advantage of the Inſufficiency of the Plea, by demurring to it, if he ſee Cauſe; and it was the Defendant's Fault to plead ſuch a Plea as might be demurred unto. F

A **If** the Defendant will plead a dilatory Plea, he muſt plead it upon the giving of the firſt Rule in the Office for the Defendant to plead; and he muſt plead a Plea in Chief, after the ſecond Rule given in the Office for the Defendant to plead; and this is the Reaſon that Judgment cannot be entered againſt the Defendant for want of a Plea, until the Time given by the two Rules to plead be paſt: *Mich.* 24 *Car. B. R.* But if he then put in a dilatory Plea, the Plaintiff may move the Court for him to plead as he will ſtand to it.

When Defendant muſt plead a dilatory Plea.

B **If** the Defendant hath pleaded an Outlawry in Diſability of the Plaintiff, and that be reverſed, he ſhall not plead another in Diſability. *Per Magiſtrum Liveſay, & al' &c. Paſch.* 21 *Car.* 2.

If Defendant have pleaded an Outlawry that is reverſed, he ſhall not plead another.

C **If** the Defendant tender an Iſſue in Abatement of a Writ, and the Plaintiff doth demur upon the Iſſue, if upon arguing of the Demurrer the Iſſue is over-ruled, that is, it is adjudg'd by the Court to be a good Iſſue, there muſt be a *Reſpondeas Ouſter*; for the over-ruling upon the Demurrer is not peremptory to the Party: *Trin.* 24 *Car. B. R.* For the Matter in Queſtion is not determined by the Demurrer, but only the Goodneſs of the Writ brought; and if it be adjudged good, the Party muſt anſwer over to the Matter contained in it; for this is all the Writ requires. But if Iſſue be taken upon a Plea in Abatement, as upon a Miſnoſmer in the Plaintiff, or other ſuch like Pleading, and it be found againſt the Defendant, the Jury ought to aſſeſs Coſts and Damages, and the Verdict in that Caſe is final, and there ſhall be no *Reſpondeas Ouſter*, as upon a Demurrer; becauſe it is the Folly of the Defendant to put himſelf upon a falſe Iſſue to trouble himſelf and the Court; and no Man ſhall take Advantage of his own Wrong: But in the other Caſe of a *Reſpondeas Ouſter*, he referred himſelf to the Judgment of the Court; and ſo there is an apparent Diverſity in theſe two Caſes. *Kittermaſter* againſt *Stanly*; *Mich.* 21 *Car.* 2. *in B. R.* And ſo was the Opinion of the Court of King's Bench, upon a Writ of Error brought upon a Judgment given in the Common Pleas between *Amcotts* and *Amcotts*: *Paſch.* 17 *Car.* 2. See after Title **Peremptory.**

If Defendant tender an Iſſue in Abatement of the Writ, and Plaintiff demur upon it, if the Iſſue be over-ruled there muſt be a *Reſpondeas Ouſter.*

D **See** Matter of Abatement pleaded in Bar and Judgment in Chief. 3 *Lev.* 260.

Abatements pleaded in Bar and Judgment in chief.

E **If** the Defendant doth not plead according to the Rules of the Court, ſo that the Plaintiff may enter Judgment upon a *Nil dicit*; yet if after the Rules are out, the Defendant do put in his Plea into the Office before the Plaintiff hath entered his Judgment, this Plea is to be accepted, and the Plaintiff ought not then to enter his Judgment; and therefore it behoves Attorneys to be vigilant in their Practice: 21 *Car. B. R.* and *Hill.* 23 *Car.* For a Judgment upon a *Nil dicit* is for want of Plea; but in this Caſe here is a Plea, and if ſuch a Judg-

If Defendant pleads before Plaintiff hath entered his Judgment, his Plea will be accepted.

ment ſhould be entered, it would be, *in facto*, a falſe and irregular Judgment; and therefore the Court will not ſuffer him to enter it.

No Dilatory Plea to be received in any Court without Oath.

4 & 5 Ann. cap.

No Dilatory Plea to be received in any Court, unleſs the Truth thereof be proved by Affidavit, or ſome other probable Matter ſhewn for Cauſe upon a Demurrer: This is by the Statute of 4 & 5 *Ann.* See Title **Demurrer.** A

How a foreign Plea muſt be.

A foreign Plea muſt be engroſſed in Parchment, and ſigned by Counſel, and put in upon the Oath of the Defendant, that is, he muſt ſwear that his Plea is true; or ſuch a Plea is not to be received: *Mich.* 22 *Car. B. R.* and *Mich.* 24 *Car. B. R.* Becauſe thereby he endeavours to ouſt this Court of its Juriſdiction. B

What is a foreign Plea.

A foreign Plea is when the Defendant doth plead ſuch Matter; that if it be true, the Cauſe cannot be tried in the Court where it is pleaded; and in regard that thereby the Defendant doth endeavour to hinder the Proceedings of this Court, and to delay the Plaintiff, therefore the Court will make him ſwear his Plea to be true, that the Court may not be deluded, nor the Plaintiff trifled with by a falſe Plea; and if he will not ſwear his Plea to be true, the Plaintiff may enter Judgment for want of a Plea. *Trin.* 1650. *B. S.* C

Why the Law refuſes double Pleadings.

Two Things requiſite in every Plea.

The Law refuſeth double Pleadings, and Negatives Pregnant, although they be true, becauſe they do inveigle and not ſettle the Judgment upon one Point; but it requires in every Plea two Things, the one, That it be ſufficient in Matter: the other, That it be deduced and expreſſed according to the Forms of Law; and if either of theſe be wanting, it is good Cauſe of Demurrer. D

What is a double Plea.

A double Plea is ſuch a Plea, that one ſingle Iſſue cannot determine all the Matter iſſuable that is contained in it, but the Defendant is put to a double Anſwer: *Hill.* 22 *Car. B. R.* And ſuch a Plea is not a good Plea, becauſe a good Iſſue cannot be joined upon it with a ſingle Iſſue; becauſe where there is double Matter no certain Iſſue can be taken, which is clearly contrary to the Nature of an Iſſue; for an Iſſue ought to be ſingle, and to be taken upon one ſingle Point. E

That two of the Parties are dead, is not double.

A Plea that two of the Parties are dead is not double, although the Death of one of them would abate the Writ. 2 *Lev.* 82. F

When a Plea that contains divers Matters is not double.

Although a Plea do contain divers Matters in it, upon which an Iſſue may be taken, yet this Plea is not double, if the Plea could not have been good, that is, would not have anſwered the whole Declaration without alledging all thoſe Matters in it: *Mich.* 22 *Car. B. R.* For though the Law doth not allow captious Pleas, yet it doth not deny the Defendant to plead all ſuch Matters that his Caſe affords for his juſt Defence. G

A If one be compelled to alledge double Matter in his Plea, yet if he do inſiſt but upon one of them, the Plea is not double: *Trin.* 1651. *B. S.* For upon that Matter only which it is inſiſted upon, ſhall Iſſue be joined, and the other Matter requires no Anſwer.

When a Plea ſhall not be double.

B By the Statute of 4 & 5 *Annæ*, *For the Amendment of the Law*, it is enacted, That it ſhall be lawful for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in Replevin, in any Court of Record, (with the Leave of the Court) to plead as many ſeveral Matters thereto as he ſhall think to be neceſſary for his Defence: But if ſuch Matter ſhall, upon a Demurrer joined, be adjudged inſufficient, Coſts ſhall be given at the Diſcretion of the Court: Or if a Verdict ſhall be found upon any Iſſue in the ſaid Cauſe for the Plaintiff or Demandant, Coſts ſhall be alſo given in like Manner; unleſs the Judge who tried the ſaid Iſſue ſhall certify, That the Defendant or Tenant, or Plaintiff in Replevin, had a probable Cauſe to plead ſuch Matter, which upon the ſaid Iſſue ſhall be found againſt him.

The Tenant or Defendant in any Action, or any Plaintiff in Replevin, with the Leave of the Court, may plead as many ſeveral Matters as they think fit.

4 & 5 Annæ.

But if ſuch Matter be inſufficient, to pay Coſts.

C Every Man's Plea muſt be taken moſt ſtrongly againſt him that pleads it; for every Man is preſumed to make the beſt of his own Caſe.

Pleas taken moſt ſtrongly againſt the Pleader.

D Every Plea ought to have its proper Concluſion; as a Plea to the Writ to conclude to the Writ; a Plea in Bar to conclude to the Action; an Eſtoppel to relie upon the Eſtoppel, *&c.*

All Pleas ought to have a proper Concluſion.

E In all Pleas in the Affirmative, the Defendant ought to conclude his Plea with *Et hoc paratus eſt verificare*; but Pleas merely in the Negative ought not to be averred, becauſe a Negative cannot be proved. *Co. Lit.* 303. *a.* As upon a Replication, *Quod non habetur tale Recordum, Et hoc paratus eſt verificare per Recordum illud*, this is incertain and naughty. See *Comb.* 86, 311. 3 *Salk.* 208, 209.

How to conclude Pleas in the Affirmative, and how in the Negative.

F He who hath an Eſtate of Inheritance may plead, That he is ſeiſed in Fee; without ſhewing the Commencement of his Eſtate. 10 *Rep.* 98. *a.*

Need not ſhew the Commencement of an Eſtate in Fee.

G Pleading of a Seiſin, without ſaying of what Eſtate, is good in Treſpaſs, but naught in Replevin. *Lutw.* 1316. See *Cro. Eliz.* 288. *pl.* 4.

Where pleading of Seiſin is good in Treſpaſs, but naught in Replevin.

H If a Man in pleading derives an Eſtate from another Man, and doth not ſhew what Eſtate the Perſon had from whom he derived his Eſtate, this is naught: For he ought to ſhew, That the Perſon had ſuch an Eſtate as will maintain and ſupport the Eſtate by him claimed. *March* 1.

How to plead a derivative Eſtate.

I See after, where the Seiſin of Copyhold Land ought to be pleaded of Neceſſity, or otherwiſe it ſhall be intended Frank-fee. 3 *Lev.* 126.

Where the Seiſin of Copyhold ought to be pleaded.

If

If the Plea commences in Bar, and concludes in Abatement, Judgment is final.

If a Plea commenceth in Bar, and concludes in Abatement, the Judgment is final. 1 *Lev.* 312. A

Where *Et hoc paratus eſt verificare*, for *Prout patet per Recordum*, is ill.

In a *Scire facias* againſt the Bail upon a Writ of Error according to the Statute of 3 *Jac.* the Defendant prays Oyer of the Condition, and on that he pleads that the Plaintiff proſecuted the Writ of Error with Effect, and if the aforeſaid Judgment was reverſed, *Et hoc paratus eſt verificare*, where it ought to have been *Prout patet per Recordum*; and Plea was ruled ill. *Raym.* 50. B

And where for *Hoc petit quod inquiratur*, &c.

So if a Plea conclude *Hoc paratus eſt verificare*, where it ought to have been *Hoc petit quod inquirat. per Patriam*, it is Matter of Subſtance on Demurrer. *Ibid.* 98. *vide eund.* 182. C

Want of *Prout patet per Record'* how cured.

The want of the Words *prout patet per Record'* cured by Plea over. 3 *Lev.* 311. D

Likewiſe a Plea in Abatement.

So a Plea in Abatement without *hoc paratus eſt verificare*; for it is only Form. *Ibid.* & 1 *Lut.* 16, 21, 333. E

Where a Plea ought to conclude *prout patet*, &c.

Where a Declaration or Plea ought to conclude *prout patet per Record'*. *Ibid.* 111. *vide eund'* 207 of an Indictment in the Seſſions of Peace: So *prout patet de Originali Retorn. de Record. Ibid.* 264. When it is pleaded, that there is ſuch a Record in the ſame Court, the true Form is to pray, *Quod Record' per Juſtic. videatur & inſpiciatur. Ibid.* 945. F

Condemn' per Juſtic. de Aſſiſ. prout patet, &c. good.

Condemn' per Juſtic' de Aſſiſ. prout patet per Record', good. *Lev.* 205. G

How to plead a *Committitur*.

A *Committitur* ought to be pleaded *prout patet per Record'*. a Writ not. 1 *Lev.* 211. H

Where to conclude with *Paratus eſt verificare*, and where to the Country.

In all Caſes where the Defendant pleads Matter of Excuſe not contained in the Declaration, he ſhall ſay, *Et hoc paratus eſt verificare*, at the End of his Plea, and not conclude to the Country. 3 *Leon.* Caſe 129. I

How the Concluſion of a Plea or Replication ought to be.

The Concluſion of a Plea or Replication, is a Summary of the Pleader's Prayer; which as it ought to be congruous with the Matter precedent in the Defendant's Plea, ſo ought the Plaintiff's Replication to anſwer not only the Subſtance in the Defendant's Plea in the Body of his Replication, but the Concluſion of his Replication ought to be juſt oppoſite to the Concluſion of the Defendant's Plea. K

Where it ſhould be *per Recordum*.

The Defendant concluded his Plea, *Et hoc paratus eſt verificare*, where it ſhould be *Verificare per Record'* it is naught. 3 *Lev.* 29. But this is now helped by the Statute 4 & 5 *Annæ*. L

4 & 5 Annæ.

Where the Plea or Replication muſt be concluded to the Country, and where not.

Where the Plaintiff or Defendant muſt conclude his Plea or Replication to the Country, and where not. *Lut.* 101. M

A **Where** a Plea is pleaded with an *Et ſic* in the Affirmative, as *Et ſic Actio accrevit infra ſex Annos*; this ought to conclude, *Et hoc paratus eſt verificare*: But where it is in the Negative, as *Et ſic non eſt Factum, &c.* it ought to conclude to the Country, becauſe there the ſpecial Matter is waved: But it is not ſo when it is in the Affirmative. *6 W. 3. B. R.*

Where a Plea is pleaded with an *Et ſic*, how it ought to conclude.

B **Upon** an Indictment for Perjury, it is ſet forth that the Defendant *Falſo dixit & depoſuit*, and ſhewed in what Court, and what Iſſue, and concluded *Et ſic commiſit voluntarium & corruptum Perjurium*: This was naught, becauſe it was not ſaid, That *Falſo voluntarie & corrupte dixit*; for the Clauſe which followed, *Et ſic commiſit voluntarium & corruptum Perjurium* will not help it, becauſe it is a Concluſion upon Premiſſes inſufficiently alledged. 5 *Mod.* 351.

Where *Et ſic* is a Concluſion upon Premiſſes inſufficiently alledged.

C **Treſpaſs** againſt four, and three pleaded in Abatement the Death of one *Puis darrein continuance*; they muſt conclude *Per Judicium ſi Curia ulterius procedere vult*, and not *Quod breve præd' caſſetur*; for this in Fact was abated before the Death of the Party. 3 *Lev.* 120.

Treſpaſs againſt four, and three pleaded Death of one *Puis darrein continuance*.

D *Sci. fa.* upon a Recognizance taken in the Common Pleas to proſecute a Writ of Error with Effect, the Defendant pleads, That he hath proſecuted it with Effect, *& adhuc pendet*; but doth not conclude, *Prout patet per Recordum*. Now the Defendant's Plea conſiſting of Matter of Excuſe, need not be ſo concluded: But the Plaintiff ought in his Replication to ſhew, that the Record was removed into the King's Bench, and that Errors were aſſigned, and Judgment affirmed; and to traverſe, that the Writ of Error *adhuc pendet*, is naught: Becauſe it is the putting of Matter of Record to be tried by a Jury.

Matter of Record muſt not be put to be tried by a Jury.

How the Defendant's Plea to be concluded upon Matter of Record.

E **When** in pleading of a Record, the Record is the Subſtance of the Plea, there the Plea muſt conclude, *Prout patet per Recordum*: But where it is but Inducement, it need not. 5 *Mod.* 8.

Where the Plea is good, without concluding of it *Prout patet per Recordum*.

F **It** is ſufficient that a Plea in Bar is good to a common Intent; but a Declaration in the Subſtance thereof muſt be good to every Intent.

A Plea in Bar muſt be good to a common Intent, but a Declaration to every Intent.

G **A Plea** in Bar, is to force the Plaintiff to make a Replication, alſo to compel the Plaintiff to come to an Iſſue, and therefore ought not to be very certain; for it may be an Iſſue may not be joined thereupon but upon the Replication. *Plow. Com.* 82. *b.*

What a Plea in Bar is to do.

H **A Plea** that anſwers only to Part, is naught, 1 *Lev.* 17.

A Plea only to Part, is naught.

Where you plead to all, and your Plea extends but to Part.

What the Plaintiff muſt do.

Where it is a Diſcontinuance.

A Where you plead to all, and your Plea extends but to Part, your Plea is naught: So alſo if you plead to Part, and ſay nothing of the Remainder, and the Plaintiff doth not take his Judgment by Default for the Reſidue, to which there was no Anſwer, as he ought to do, but demurs, it will be a Diſcontinuance. *Trin.* 13 *W. B. R.* 4 *Rep.* 62.

Defendant muſt anſwer all the Matters in the Plaintiff's Declaration.

B If the Defendant's Plea do not anſwer all the Matter contained in the Plaintiff's Declaration, it is no good Plea; but the Plaintiff ſhall have his Judgment intire againſt him for want of a Plea. *Hill.* 1650. *B. S.* 31 *Jan. Vide* 1 *Lev.* 16.

How to plead to a Declaration in Treſpaſs.

C Where you plead Not guilty, *Quod venire vi & armis, & quoad reſid'* juſtify, you muſt be ſure to anſwer fully every Thing in the Declaration.

How it is where you do not anſwer to all the Treſpaſſes.

D But if you plead *Quoad venire vi & armis, &c.* Not guilty; and then plead over to ſome particular Treſpaſſes in the Declaration, omitting ſome others: The Plaintiff, *quoad* thoſe which are not pleaded unto, muſt immediately take his Judgment, otherwiſe it will be a Diſcontinuance. *Trin.* 13 *W.* 3. *B. R.* See 4 *Rep.* 62. *Herlakenden*'s Caſe.

Common Bar and new Aſſignment, a Replication to it not anſwering the whole Declaration.

E A *Domum & clauſum fregit* was brought, the Defendant juſtifies in an Houſe and Cloſe in ſame Town, and ſhews which, to put the Plaintiff to his new Aſſignment: The Plaintiff comes and ſays, That the Houſe (without ſaying, *and Cloſe*) which he complains of, is ſuch an Houſe and names it; the Defendant demurs: And Judgment upon the Omiſſion of the Cloſe. *Poph.* 109.

General Eſtates in Fee-ſimple may be generally alledged.

F General Eſtates in Fee-ſimple may be generally alledged, *viz. Quod* A. *ſeiſitus fuit in dominico ſuo ut de feodo*, but the Commencement of Eſtates-tail, and other particular Eſtates, ought regularly to be ſhewn. *Co. Lit.* 300. *b.*

Plea that he was ſeized in Fee at the making of the Leaſe, and good.

G If one pleads a Conveyance in Reverſion in Fee by Leaſe and Releaſe, and it is alledged that he was ſeized in Fee at the Time of making the Leaſe, but not at the Time of the Releaſe; yet the Plea is good, for the Eſtate in Fee ſhall be intended to continue. 1 *Lutw.* 357.

Where *Nil habuit, &c.* is ill.

H *Quod nil habuit in Tenementis,* contrary to the Indenture of Demiſe, ill. Replication, *quod ſeiſit'* without ſhewing in what Eſtate, ill. 3 *Lev.* 193.

How to plead a Leaſe and Releaſe.

I A Leaſe and Releaſe were pleaded, and ſays, That by Virtue of the Releaſe he was ſeiſed in Fee; and upon a Demurrer it was moved, That it was not well pleaded, but that it ſhould have been by Virtue of the Leaſe and Releaſe. *Curia.* The Leaſe is merged in the Releaſe, and the Pleading is good. *Trin.* 7 *W. B. R.*

A **In** pleading of a Feoffment, you ſay, *Virtute cujus præd' B. ſeiſitus fuit, &c.*

How to plead a Feoffment.

B **But** in pleading of a Leaſe you muſt ſay, *Virtute cujus præd' B. intravit & fuit inde poſſeſſionatus.* There needs no Entry to be pleaded upon a Feoffment, becauſe the Livery gives him actual Poſſeſſion; but in Caſe of a Leaſe for Years, the Leſſee is not in actual Poſſeſſion, until his Entry. *Co. Lit.* 201. *a.*

How to plead a Leaſe.

C **Entry** of the Leſſee in pleading of a Leaſe for Life, is Surpluſage; becauſe it paſſes by Livery.

How to plead a Leaſe for Life.

D **In** pleading of a Leaſe for Years, the Defendant muſt ſhew what Title the Leſſor had: So alſo the Avowant muſt ſhew his Title particularly: But in a Declaration upon a Leaſe for Years, the Plaintiff need not; becauſe the Defendant hath, by taking of a Leaſe for him, admitted him to have a good Title.

How to plead a Leaſe for Years.

How to avow, and how to declare upon a Leaſe for Years.

E **So** alſo in a Juſtification for Damage-feaſant upon a Leaſe for Years, and doth not ſhew what Title the Leſſor had; this is ill in Pleading, but good in a Declaration.

How to juſtify on a Leaſe for Years for Damage-feaſant.

F **Matters** that go in Defeazance of a Deed, need not to be alledged in the Count, but come more properly on the Defendant's Part to be pleaded. *Raym.* 24, 65.

Matters that go in Defeaſance of a Deed, need not be alledged in the Counts.

G **What** Matters ought to come in on the other Part, 1 *Lutw.* 29, 30, 150, 393, 394. 2 *Lutw.* 1230, 1637.

What Matters muſt come in on the other Part.

H **Where** the Bar is good, and the Replication is naught, it is no Matter what the Rejoinder is. 3 *Lev.* 31.

Where the Bar is good, and Replication naught, no Matter what the Rejoinder is.

I **In** an Action of Trover, regularly, the Plea muſt be Not-guilty; becauſe if a Man hath an Intereſt in a Thing for which the Action is brought, he is Not guilty of any Converſion; or if a Man hath any lawful Cauſe to detain, but not convert, he muſt plead Not guilty, and give his Cauſe of Detainer in Evidence.

In Trover the Plea muſt be Not-guilty.

K **Upon** a Matter pleaded, partly amounting to the general Iſſue, and partly ſpecial, admitted upon a general Demurrer. 3 *Lev.* 41.

Plea partly general, and partly ſpecial, allowed.

L **Where** the General Iſſue goes to the Avoidance of the Action, there it ought always to be pleaded: But where the Defendant confeſſes and avoids, there he muſt plead ſpecially: But in all Caſes where a Special Plea is pleaded, which amounts but to the General Iſſue, and the Plaintiff demurs to it, he muſt ſhew for Cauſe that it amounts but to the General Iſſue. *Mich.* 8 *W.* 3. *B. R.*

Where the General Iſſue ought to be pleaded, and where a Special Iſſue.

M **A Concord** by Parol, is no good Plea in Bar to an Action brought upon a ſingle Bill; for bare Words are not of ſo great Force in Law, as to avoid a Deed

Where a Parol-Concord is not a good Plea.

under

4 & 5 Annæ.

under Hand and Seal: But now by the Statute of 4 & 5 *Annæ*, Payment is a good Plea to it.

What is a good Plea to an Action upon a Deed, without a Condition or Defeazance.

A **Where** an Action lies merely upon a Deed itſelf, without a Condition or Defeazance therein contained, there no Plea in Bar is good without another Deed of as high a Nature: But if it be upon a Bond, with Condition to pay Money, there, upon Oyer of the Condition the Defendant may plead *ſolvit ad diem*, and good: Alſo, ſome Pleas which are Matters in Law, are good Bars without a Deed; as Infancy, Dureſs, Raſure, *&c.*

Payment ſhall be a good Plea on Bond, though paid after the Day, and before the Action.

4 & 5 Annæ.

B **By** the Statute of 4 & 5 *Annæ*, for the Amendment of the Law, Payment may be pleaded to any Action of Debt upon a ſingle Bill, or Debt of *Sci. fa.* upon a Judgment: And where an Action of Debt is brought upon a Bond, with a Condition or Defeazance to make void the ſame upon Payment of a leſſer Sum at a Day or Place certain; if the Obligor his Heirs, Executors or Adminiſtrators, have, before the Action brought, paid the Principal and Intereſt due by the Defeazance or Condition, tho' ſuch Payment was not made ſtrictly according to the Condition or Defeazance; yet it may be pleaded in Bar of ſuch Action, and ſhall be as effectual a Bar as if the Money had been paid at the Day and Place, according to ſuch Condition or Defeazance, and had been ſo pleaded. 3 *Lev.* 120.

How to plead Covenants performed to a Bond for Performance of Covenants.

C **Where** there is a Bond for Performance of Covenants, it is not a good Plea to an Action brought on this Bond for the Defendant to ſay, That he hath performed all the Covenants; but he muſt plead the whole Deed: and if there be no Negative Covenants, then to plead Performance generally; but if there be Negative Covenants, then to ſo many he muſt anſwer them particularly, and the reſt generally. *Paſch.* 11 *W.* 3. *B. R.*

An Award how to be pleaded.

D **Where** the Defendant pleads an Award, if he doth not plead Performance, it is no Plea. 2 *Roll.* 455. See 2 *Saund.*

General Pleading that he made it appear, and ſays not how.

E **The** Defendant pleads that he made it appear, and ſays not how; it is naught. 2 *Lev.* 125.

Plea that he did not attorn without giving Notice to Leſſor, and good.

F **He** is alſo obliged not to attorn without Conſent of his Leſſor. Plea, that he did not attorn without, *&c.* is not a Negative pregnant, but a good Plea. 1 *Lutw.* 593. He was alſo held to deliver Poſſeſſion to his Leſſor of all Lands which he then held or ſhould hold, *&c.* and he pleads, that he held five Cloſes, *&c.* and to that he pleads Performance generally, and does not aver that the ſaid five Cloſes were all the Cloſes which he held; and yet good. *Ibid.*

General Pleading diſallowed.

G **General** pleading, though in Matters of Fact, is diſallowed; as a Covenant to make an Eſtate by the Adviſe of *J. S.* he muſt ſhew what Advice he gave:

A Con-

A Condition that the Obligee ſhould enjoy an Office according to a Grant of Letters Patent, he muſt not plead the Letters Patenet *verbatim*, but muſt ſhew the Effect of them, and that he enjoyed accordingly. *Hob.* 295.

A **If** Covenants be all in the Affirmative, the Defendant may plead Performance generally; if any be in the Negative, to ſo many he muſt plead ſpecially, and to the reſt generally; if any be in the Disjunctive, he muſt ſhew which of them he hath performed.

How Defendant may plead Affirmative Covenants, and how Negative.

B **Covenant** to deliver to him, *&c.* ſuch a Day, Plea that he delivered *ſecundum formam, &c.* ill. 1 *Lev.* 145.

Covenant to deliver ſuch a Day: Plea that he delivered *ſecundum formam* is ill.

C **In** Debt upon a Bond with Condition in the Disjunctive, general Performance is no Plea. 1 *Lutw.* 581.

General Performance no Plea to a disjunctive Condition.

D **In** Debt upon a Bond for the Performance of Covenants, the Defendant pleads Performance of all Covenants generally, without ſetting forth the Indenture; the Plaintiff demurs: This is naught, for he ought to ſet forth the Indenture. 1 *Keb.* 415. *pl.* 124. 1 *Sid.* 97. *pl.* 25. Alſo how to plead in an Action of Covenant. *Mod.* Caſe 1175. Alſo all the Covenants muſt be ſet forth; for ſome of them might be in the Negative. *Aleyn* 72.

How to plead Performance of Covenants in an Indenture.

All the Covenants muſt be ſet forth, and why.

E **A Leſſee** at Will is obliged to give Notice to his Leſſor of all Declarations delivered to him, or to any other, *&c.* with his Privity. General Performance is a good Plea. 1 *Lutw.* 593.

Leſſee at Will muſt give Notice of Declarations.

F **Condition** of an Obligation to do divers particular Things, Plea *quod performavit omnia* is ill; he ought to anſwer to every Particular; otherwiſe if the Condition be to perform Covenants, general Performance ſufficeth. 1 *Lev.* 303.

Condition to do ſeveral Things, *Performavit omnia*, is ill.

G **Where** the Law will allow a conciſe Manner of Pleading to perform a Condition, according to the very Word of it, or not. 1 *Lut.* 422, 423.

Where the Law will allow a conciſe way of Pleading, and where not.

H **After** Conditions performed pleaded, the Defendant can never come and ſay that there are no Covenants, nor that the Rent was extinguiſhed.

The Defendant cannot after Conditions performed ſay, There were no Covenants, or the Rent was extinguiſhed.

I **If** I am bound upon Condition to enfeoff *A.* of all Lands, which were the Lands of *J. E.* in pleading of the Performance of that Condition, I ought to ſhew what Lands in certain; becauſe they paſs out of me by Feoffment. 1 *Leon.* 71. Caſe 95.

How to plead when the Condition is to enfeoff *A.* of all Lands, &c.

K **Pleading** of ſaving harmleſs, without ſaying how, is good upon a general Demurrer. 1 *Lev.* 194. See Title **Covenant**, and *Aleyn* 72. *contra.*

Where Pleading ſaved harmleſs generally is good, and where not.

Plea of a Tender, *&c.* muſt be without Imparlance.

A **In** all Caſes of Pleading of a Tender, or where you ſay in your Plea, you were always ready to pay Money, or to do ſuch an Act, you may be ſure to plead without Imparlance: For how can you ſay, *Semper paratus & uncore priſt*, when you have imparled?

Obtulit omitted, is naught.

B *Parat' a deliver' obl'* without *obtulit*, is ill. 3 *Lev.* 103.

To what Time *adhuc* refers.

C **Plea** *adhuc, &c.* refers to the Time of the Writ, not to the Count. *Ibid.* 146.

In Debt for Rent, where Defendant need not plead a Tender.

D **In** Debt for Rent on a Leaſe for Years, the Defendant needs not plead a Tender; otherwiſe where there is a Condition in a Leaſe, the Breach whereof is to be ſaved. *Raym.* 418, 419.

Debt for Rent, where *Paratus eſt ſolvere*, without *obtulit*.

E **In** Debt for Rent, *Paratus ſolvere*, and *Profert in Curia*, without *Obtulit*, is naught. 2 *Lev.* 209. Alſo this Plea goes not to the Action, but to the Excuſe of Damages only. 2 *Lev.* 209. 3 *Lev.* 104.

How to plead a Tender.

F **Alſo** in Pleading of a Tender, you muſt at the putting of your Plea into the Office, bring the Money into Court, or elſe your Plea cannot be received, and the Plaintiff will ſign his Judgment; but if the Plaintiff is not ſatisfied with the Money tendred, but will take Iſſue that there is more due, he muſt in his Pleading acknowledge the Receipt of the Money brought into Court, and diſcharge the Defendant from the ſame.

If Verdict be given in a Cauſe where no Iſſue was joined, it is a Jeofail, and not helped by the Statute.

G **If** there be a Verdict given in a Cauſe wherein no Iſſue was joined, this is a Jeofail, and it is not helped by the Statute; for the Statute is to help ill Iſſues, and not ſupply Iſſues where none are joined, and therefore there muſt be a Repleader to bring the Matter in Diſpute in Queſtion; for there is nothing tried, and ſo there can be no Verdict: But an informal Iſſue joined is help'd by the Statute of Jeofails after a Verdict, but an immaterial Iſſue is not. See the *General Abridgment of the Law*, Title **Amendment.**

After Verdict, *De injuria ſua propria* held a good Plea to Matter of Record.

H **In** Treſpaſs for beating and impriſoning his Wife; the Plaintiff replies, *De injuria ſua propr' abſque tali cauſa*, and Iſſue upon it, and Verdict for the Plaintiff; and moved for a Repleader, becauſe *De injuria ſua propria*, is not a Plea to Matter of Record; but held good enough after Verdict. *Raym.* 50.

If an immaterial Iſſue be joined, there muſt be a Repleader.

I **If** an immaterial Iſſue be joined, it is not helped by the Statute of Jeofails; but there ought to be a Repleader: *Paſch.* 1650. 5 *Maii, B. S.* 31 *Jan. Vide* Title **Iſſue**: For an immaterial Iſſue is, in Law, as no Iſſue. 1 *Lev.* 16.

Where Falſhood ſhall hurt, and where not.

K **If** the Falſhood in the Defendant's Plea is neither hurtful to the Plaintiff nor beneficial to the Defendant, there it ſhall never hurt the Defendant; but where the Defendant pleads a falſe Plea, which Falſhood is detrimental to the Plaintiff, and beneficial to the Defendant, there it ſhall; as by a Defendant Executor pleading ſeveral Judgments, and concluding that he hath not Aſſets *Ultra*; the Plaintiff may reply, That one of the Judgments is ſatisfied; which Replication ſhall be fatal to the Defendant, if it proves true: But to plead that he hath fully adminiſtred, and that he hath not *Bona & catalla præterquam bona quæ non ſuffic.* to ſatisfy the Judgment, is void for the Uncertainty, for no Sum being mentioned, no Iſſue can be taken; but if it had been ſaid that he had not *Bona & catalla præterquam bona & catalla ad valentiam quæ erga ſatisfactionem Judicii præd. onerabil. ſunt*, it is good pleading. *Vaugh.* 104.

A **In** Debt againſt an Executor, he pleaded *plene adminiſtravit ante exhibitionem billæ*, where it ſhould have been *ante impetrationem brevis, &c.* it being by Original, held ill. 2 *Lutw.* 1637, 1638.

Executor pleaded *plene adminiſtravit ante Exhibitionem billæ* for *ante impetrationem Brevis*, and held ill.

B **It** hath been adjudged a good Plea in a *Scire Fa.* brought againſt an Executor, upon a Judgment entered into by the Teſtator, to plead fully adminiſtred; for if he have fully adminiſtred, he is not to be charged; but it is better for him to plead, that no Goods of the Teſtator's are come to his Hands with which he could ſatisfy the Debt, *viz.* ſince the bringing of the Writ of *Scire Facias* againſt him; for this ſeems to be a clearer Plea in Bar. *Mich.* 22 *Car. B. R.* See *Raym.* 230, 231.

Plene Adminiſtravit pleaded by an Executor to a *Scire Facias* upon a Judgment of his Teſtator, adjudg'd a good Plea: But it had been better to plead *Nulla bona.*

C **Although** there be Judgment againſt an Executor, upon a *Scire Facias*, upon a Judgment of his Teſtator, yet the Judgment muſt be *de bonis Teſtatoris ſi tantum, &c.* and thereupon muſt go out a *Fieri Facias de bonis Teſtatoris*, and upon a *nulla bona Teſtatoris* returned a *Sciri Fieri* Inquiry, which is a Writ which includes a *Fieri facias de bonis Teſtatoris*; and if the Sheriff cannot find Goods, that then he enquire by the Oath of twelve Men, whether the Executor hath waſted the Goods or no? and if he hath, then the Value of them; and alſo that he ſummon him to appear in Court at a certain Day, to ſhew Cauſe why Judgment ſhould not be entered againſt him *de bonis Propriis*; now upon a Return of *Nulla bona Teſtatoris*, and alſo of an Inquiſition and *Devaſtavit* found, and of a *Scire feci*, if the Defendant, upon a four Days Rule given after the Return of the Writ doth not appear, there will be a Judgment againſt him, *Quod quer. habeat Executionem, &c. De bonis propriis, &c.* but if the Sheriff return a *Nichil* upon the *Scire facias*, there the Plaintiff muſt ſue out an *Alias Scire facias* reciting all this Matter, upon which the Defendant may appear and traverſe the Inquiſition by Pleading *Non devaſtavit*; but I think it will not be proper for him to plead *Plene adminiſtravit*. See *ante* Executor.

How Judgment muſt be againſt an Executor upon a *Scire facias* on a Judgment of his Teſtator.

An

Executor pleads ſeveral Judgments, Plaintiff replies *non ſolvit*, *&c.* and good.

An Executor pleads ſeveral Judgments; the Plaintiff replies, *non ſolvit* the ſeveral Sums, *& de hoc*, *&c.* and good. 1 *Lev.* 281. A

Special Adminiſtration, omitting *quod ipſe non habet*, is ill.

If one pleads a Special Adminiſtration, it is ill, omitting *quod ipſe non habet.* 3 *Lev.* 28. B

If Executor pleads a Judgment, he need not ſhew, That the Teſtator had made ſuch a Bond.

If an Executor or Adminiſtrator pleads a Judgment, he need not to ſhew that the Teſtator or Inteſtate had made ſuch Bond; but it is ſufficient to ſhew the Declaration upon which the Judgment was given, by which it appears, that the Plaintiff had declared upon ſuch a Bond. 1 *Lut.* 662. C

Nor need he aver that the Judgment was truly delivered.

Alſo he need not to aver in ſuch Caſe, that the Judgment was *juſte & vere delib.* *Ibid.* D

How to plead Letters of Adminiſtration.

Where one pleads Letters of Adminiſtration which are granted to him by ſuch an Ordinary, of whom the Law doth take Notice, he may plead, That they were granted to him by ſuch an Ordinary, *Debita legis forma:* But if they be granted by an inferior Ordinary, of whom the Law doth not take Notice, he muſt then plead, That they were granted unto him *per* A. B. *Ordinarium illius loci:* If by an inferior Juriſdiction, then you muſt ſay, *per* A. B. and ſet forth his Title as in the Adminiſtration; and ſay, *Cui commiſſio adminiſtrationis prædictæ de jure pertinuit:* That the Court may judge whether they be well granted in regard of the Power of the Ordinary, or other Perſon that granted them, or not; which they may the better do when it appears by what Ordinary, or by whom they were granted. E

If Plaintiff demur to Defendant's Plea that is not good, he cannot mend it without the Plaintiff's Conſent.

If one plead a Plea that is not good, and the Plaintiff doth demur upon it, the Defendant cannot afterwards amend his Plea, without the Plaintiff's Conſent: *Mich.* 24 *Car. B. R.* For the Defendant ſhall not take Advantage of his own ill Pleading to delay the Plaintiff, and to put him to more Trouble and Charge than by the Law he may do. F

Demurrer to a Plea that ought not to be pleaded, is an Admiſſion of it.

If one do demur upon ſuch a Plea as ought not to be pleaded, by his Demurrer he doth admit the Plea to be a Plea, ſuch as it is: *Trin.* 24 *Car. B. R.* For the Demurrer is but to try the Sufficiency of the Plea. G

Where Time and Place muſt be both traverſed.

Where a Juſtification goes to a Time and Place not alledged by the Plaintiff, there muſt be a Traverſe of both. 2 *Mod.* 68. H

How to anſwer a Mal-feaſance.

Where a Mal-feaſance is laid to the Defendant's Charge, he ought expreſly to traverſe it, and not to anſwer it by Argument. *Cro. Eliz.* 285. *pl.* 5. I

A Theſe Rules are to be obſerved in Traverſes.

Rules to be obſerved in Traverſes.

1. The Traverſe of a Thing immediately alledged vitiates a good Bar.

2. Surpluſage in a Plea doth not enforce a Traverſe.

3. Nothing muſt be traverſed but what is expreſly alledged. 2 *Roll. Rep.* 37.

4. It muſt always be made to the Subſtantial Part of the Title. *Yelv.* 151. 1 *Roll. Rep.* 235.

5. Where an Act may indifferently be intended to be at one Day or another, there the Day is not traverſable; as in an Action of Treſpaſs generally, the Day is not material; but if a Matter be to be done upon a particular Day, there it is material and traverſable. *Yelv.* 122, 123. And in all Caſes where the Matter is traverſable it is iſſuable.

B Where in pleading the Parties vary in the Eſtate, as whether it was Fee-ſimple or Fee-tail, there he who varies muſt take a Traverſe. *Yelv.* 140.

If the Parties vary in pleading, he who varies muſt take a Traverſe.

C The Deſcent is the Subſtance and Body of the Plea, and not the Dying ſeiſed; and therefore the Deſcent, and not the Dying ſeiſed, muſt be traverſed. *Hob.* 232. It is a Maxim, That a Diſſeiſin alledged in the Bar or Replication is always traverſable. *Dyer* 365. *b.* 366. *a.*

Why the Deſcent, and not the Dying ſeiſed, muſt be traverſed.

D *Quæ eſt eadem,* good without Traverſe: 1 *Lev.* 241. Plaintiff replies, *Non eſt eadem,* and ill. 3 *Lev.* 92.

Quæ eſt eadem, good without Traverſe.

E Where the Plaintiff aſſigns in his Declaration a Day of the Treſpaſs committed, and the Defendant juſtifies upon the ſame Day, there needs no Traverſe, becauſe the Day is agreed upon by both Parties; but when the Plaintiff aſſigns one Day, and the Defendant ſays, that it was another Day, and traverſeth the Day alledged by the Plaintiff in his Declaration, he muſt alſo traverſe at any Time before or after the Day aſſigned by him, otherwiſe it is naught. See 2 *Saund.* 295.

If the Defendant in Treſpaſs juſtifies the ſame Day the Plaintiff aſſigns in his Declaration, there needs no Traverſe.

F If one pleads a good Matter of Juſtification, and relies not upon it, but makes it only Inducement to other Matters, it ſhall not avail him; and he hath alſo thereby given Advantage to the other Party to traverſe the laſt Matter. 1 *Lut.* 108.

Where a good Juſtification pleaded ſhall not avail.

G The Prayer of the Privilege of the Court is not properly a Plea; for it was antiently demanded by Writ, although it be now uſually allowed by the Court upon the Prayer of the Party who claims it: By *Latch*, Apprentice in the Law, of the *Middle-Temple*. And every Plea is either a Plea in Abatement, a Plea in Bar, or a Plea to the Juriſdiction of the Court; and the praying of the Privilege is none of

Prayer of the Privilege is not properly a Plea.

theſe, but only a Deſire of the Party, that he may not be ſued elſewhere, than in the Court where he prays his Privilege.

Where a Traverſe may be taken upon a Traverſe, and where not.

A **Regularly** a Traverſe cannot be taken upon a Traverſe, where a Traverſe is well taken to the material Point, and goes to the Subſtance of the Action; but where the firſt Traverſe is idle, and not well taken, nor pertinent to the Matter, there to that which was ſufficiently confeſt and avoided before, the other Parties may well take a Traverſe after ſuch an immaterial Traverſe taken before. 1 *Saund.* 30.

Quæ eſt eadem ſupplies a Traverſe of Time.

B *Quæ eſt eadem*, in Treſpaſs, ſupplies a Traverſe of Time, *&c.* 3 *Lev.* 227. See Title **Traverſe.**

Every Thing alledged in pleading ought to be traverſed, confeſs'd, or avoided.

C **It** is a general Rule, That every material Thing alledged in pleading, ought to be traverſed, confeſſed, or avoided. 2 *Leon.* Caſe 116. *fol.* 2.

Where there needs no Traverſe.

D **Where** a Plea is directly contrary to the Matter in the Declaration there needs no Traverſe. *Lutw.* 381, 382.

The Difference between pleading in Treſpaſs and Ejectment, and in real Actions and Aſſizes where Land is demanded.

E **In** an Ejectment the Defendant demurred, becauſe the Plaintiff took a Traverſe without making of any Title or Inducement; But held good, for the Defendant had avoided the Plaintiff's Title, and the Plaintiff traverſes the chief Matter, which avoids his Title; and it is not neceſſary to make a Title in Ejectment or Treſpaſs: But where Land is demanded in a real Action or Aſſize, *&c.* it is otherwiſe; but it had been better to have ſaid that he was ſeized in Fee and demiſed. *Cro. Eliz.* 671. *pl.* 28. 918. *pl.* 11. 288. *pl.* 4.

How to plead Inſufficiency of Fences.

F **The** Defendant ſays, That the Plaintiff's Fences were *Minime reparata*; the Plaintiff ſays, That they were ſufficiently repaired: The Defendant *ut prius* ſays, That they were out of Repair, *abſque hoc* that they were ſufficient: This, by *Twiſden*, is the proper Way of Pleading: 1 *Keb.* 223. *pl.* 36. But when the Defendant had ſaid they were out of Repair, and the Plaintiff ſays they are in good Repair, he muſt conclude to the Country, and not leave the Defendant to a Traverſe; but if the Defendant had not poſitively affirmed they were not repaired, the Plaintiff cannot conclude the Defendant from his Traverſe. 3 *Leon.* Caſe 242.

Where the Plaintiff muſt plead to the Country, and where no Traverſe.

De injuria ſua propria is no Replication, where there muſt be an Anſwer to the Special Matter in the Defendant's Plea.

G **An** Action of Treſpaſs and Aſſault is brought in *London*; the Defendant juſtifies in Defence of his Poſſeſſion in *Middleſex*: Here *De injuria ſua propria* is no Plea; but the Plaintiff muſt anſwer ſpecially to the Matter in the Defendant's Plea. *Hill.* 5 *W.* *&* *M.* *B. R.* See Title *De injuria ſua propria.*

A **The** Replication of *de injuria ſua propria abſque tali cauſa* refers to the whole Plea, and not to the Commandment only; for all make together but one Cauſe, and ſome of them without the other make no Plea; as in Falſe Impriſonment, the Defendant juſtifies by a *Capias* to the Sheriff, and warrant to himſelf, there *de injuria ſua propria* generally is a good Replication; for then the Matter of the Record ſhall be Part of the Cauſe; (for all makes but one Cauſe) and Matter of Record muſt not be left to the *Lay gens:* But in ſuch Caſe he may reply generally *de injuria ſua propria,* and traverſe the Warrant which is Matter of Fact; but upon ſuch a Juſtification for Proceedings in the County-Court, or other Court which is not of Record, there *de injuria ſua propria* generally is a good Replication, for that is not all Matter of Fact.

Replication of *de injuria ſua propria,* refers to the whole Plea.

B **Alſo** where the Defendant in his own Right, or as Servant to another, claims any Intereſt in the Land or Common, or Rent iſſuing out of the Lands, or any Way or Paſſage upon the Land, there *de injuria ſua propria* generally is no Plea; but if the Defendant juſtify as Servant, there *de injuria ſua propria* in any of the Caſes aforeſaid, with a Traverſe of the Commandment, this being made material, is good; for the general *de injuria ſua propria* is properly when the Defendant's Plea conſiſts merely of Matter of Excuſe, and no Matter of Intereſt; and it is ſaid *de injuria ſua propria* properly as to the Perſon or Reputation, as Battery or Impriſonment is to the Perſon, and Scandal to the Reputation; there if the Defendant excuſes himſelf with *ſon aſſault demeſne, &c.* the Plaintiff may then properly reply *de ſon tort*; for the Defendant's Plea conſiſts only in Matter of Excuſe.

Where *de injuria ſua propria* is no Plea; and where it is good.

C **Alſo** when by the Defendant's Plea an Authority or Power is immediately derived from the Plaintiff; there, although no Intereſt be claimed, the Plaintiff ought to anſwer this particularly, and not to reply *de injuria ſua propria* generally; ſo alſo where an Authority is given by Law. *Crogate*'s Caſe, *Rep.* 8.

Where the Plaintiff ought not to reply *de injuria, &c.*

D **An** Officer may juſtify by the Writ only, the Party not without the Judgment. 3 *Lev.* 19, 20.

How an Officer, and how the Party may juſtify.

E **Surpluſage** ſhall never make a Plea vicious, but where it is contrariant to the Matter before. *Co. Lit.* 303. *b.*

Where Surpluſage ſhall not viciate a Plea.

F **Declared** a good Plea, by which it appeared the Plaintiff had no Cauſe of Action, yet being badly pleaded, the Plaintiff had Judgment. *Id.* 184.

If a good Plea be ill pleaded, the Plaintiff ſhall have Judgment.

G **Debt** was upon a Bond to account: Plea, that he had accounted: Replication, that he had received ſo much, for which he had not accounted; Rejoinder, that he was robbed of it, and in his Account gave Notice thereof: And adjudged no Departure, becauſe it was an Account thereof. 2 *Lev.* 5.

Notice given of Robbery amounts to an Account.

So

What is no Departure.

A **So** upon a Condition to return all the Effects; Plea, that he had returned them; Replication, that he had no Order ſo to do: And adjudged no Departure. *Id.* 67.

Where *Non ſolvit* at the Day is ill.

B *Vide ante* **Departure.** Condition of paying at or before the 1ſt of *May*. Plea, *non ſolvit* 1 *Maii*, ill. 3 *Lev.* 293.

Plea that he had releaſed his Reverſion, good.

C **The** Pleading that one had releaſed his Reverſion, is as good as if it had been pleaded that he had releaſed all his Right in the Reverſion. 1 *Lutw.* 357.

Of the Word *prædict.*

D **Where** the adding the Word *Prædict.* where it ought not to be, ſhall not hurt. *Id.* 561.

He that appears upon a *Habeas Corpus*, muſt plead the ſame Term.

E **One** that appears in Court upon a *Habeas Corpus*, ought to plead the ſame Term when he comes in: *Hill.* 21 *Car. B. R.* In regard of the Delay and extraordinary Charge the Plaintiff hath been put unto by ſo bringing him in.

When Defendant muſt plead to an Action of Treſpaſs by Original.

F **It** was ſaid by *Glyn* Chief Juſtice, *Trin.* 1657. That if one be ſued in an Action of Treſpaſs and Ejectment by Original, he needed not to plead until the Original be ſhewed him, if he hath demanded Oyer of it before the Rules are out.

Bene & verum eſt.

G **Where** one may not plead *quod bene & verum eſt, &c.* is not alledged before. 1 *Lutw.* 581.

Plea of Inquiſition returned in Chancery.

H **Pleading** of an Inquiſition returned in Chancery, *prout patet in filaciis ejuſdem Cancellariæ, &c. Id.* 840.

In partibus tranſmarinis apud London, is abſurd.

I **It** is abſurd to plead that a Thing was done *in partibus tranſmarinis, viz. apud London, &c. Id.* 950.

How to plead that Baron and Feme were poſſeſſed of a Term.

K **That** Baron and Feme are poſſeſſed of a Term in Right of the Wife is the true pleading. 2 *Lutw.* 1007.

Conveyance pleaded *inter alia.*

L **Where** a Conveyance or Matter of Record may be pleaded *inter alia. Id. ibid.*

Where *Actionem manutenere*, and not *habere.*

M **Where** one ought to plead *quod quer' actionem ſuam præd. verſ. eum ulterius manutenere non debet*, and not *habere non debet. Id.* 1177.

Where the Defendant may plead an Arbitrament in Bar.

N **In** any Action wherein the Plaintiff, in Caſe he recovers, ſhall only recover Damages, the Defendant may plead in Bar to this Action, an Arbitrament with Satisfaction thereupon made unto the Plaintiff, although the Satisfaction given by the Arbitrators, was leſs than the Plaintiff ſuffered by the Defendant; for it was his own act to refer himſelf to the Arbitration: *Mich.* 22 *Car. B. R.* And if the Plaintiff have Satisfaction, the Law will not intend that he is dannified, and ſo hath no Cauſe of Action.

A **Where** Things ought to be pleaded as Things which happened *pendente brevi*, and where as Things which happened after the laſt Continuance. *Lutw.* 1178.

Where Things to be pleaded as happening *pendente brevi*, and when as after the laſt Continuance.

B **If** the Defendant plead an inſufficient Plea, and there is Iſſue joined upon that Plea, and a Verdict given upon that Iſſue for the Defendant; the Plaintiff ſhall not afterwards take Advantage of the Inſufficiency of the Plea: *Mich.* 22 *Car. B. R.* For it was his own Fault to join Iſſue upon it when he might have demurred upon it, and then the Court would have given Judgment for him upon the Demurrer.

Plaintiff ſhall not after Verdict, take Advantage of an inſufficient Plea.

C **It** is not neceſſary in Avowry to ſhew the Quantity or Quality of the Place where, *&c.* 2 *Lutw.* 1232.

What is not neceſſary in an Avowry.

D **If** *Nul tiel Iſſue* is pleaded, and the other ſays *e contra*, how he ought to conclude his Plea. *Id.* 1272.

How to conclude if *Nul tiel Iſſue* pleaded.

E **If** in a *Scire facias* againſt Bail, he pleads that a *Ca. ſa.* iſſued againſt the Principal, and that he was taken in Execution by it, whereas in Truth no ſuch Writ ever iſſued, or that he was not taken in Execution, or that another Writ iſſued, upon which a *Non eſt inventus* was retorned; how the Plaintiff ought to reply in ſuch Caſe. *Id.* 1172, 1173.

How Plaintiff muſt reply to a *Ca. ſa.* pleaded as iſſued againſt the Principal, *&c.* when no ſuch Writ ever iſſued.

F **In** an Appeal brought, all the Pleadings are in *Latin*, but the Counſel ought to count in *French*, as in real Actions in the Common Pleas. *Mich.* 22 *Car. B. R.*

Pleadings in Appeals are in *Latin*, but the Counſel count in *French*.

G **The** Court will not upon a Motion order the Defendant to plead peremptorily by a Day, before the common Rules of the Court for Pleading be out. *Mich.* 22 *Car. B. R.*

The Court will not order the Defendant to plead peremptorily before Rules for Pleading are out.

H **If** the Plaintiff do releaſe his Cauſe of Action to the Defendant, yet the Court will not upon a Motion ſtop the Plaintiff's Proceedings in the Action, but the Defendant muſt plead his Releaſe, (*Hill.* 22 *Car. B. R.*) in Bar of the Action; for the Court cannot take Notice of the Releaſe, which is a private Act, upon a Motion; but by pleading of it, it will appear unto the Court upon Record: Alſo the Releaſe is Matter of Fact, which is properly triable by a Jury; and the Court can never take Notice of any Thing, but what appears before them upon Record.

If the Plaintiff releaſe his Action, the Court will not ſtop Proceedings; but Defendant muſt plead his Releaſe.

I **It** is not a good Plea to plead a parol Agreement in Bar of an Agreement made by Indenture between the Parties: *Hill.* 22 *Car. B. R.* For an Agreement by Indenture is a more ſolemn Agreement, and of a higher Nature than a parol Agreement, and muſt

Parol Agreement in Bar of an Agreement by Indentures, not good.

be diſcharged by ſome Act of as high a Nature as it is, as the Rule is, *Eodem modo quo oritur, eodem modo diſſolvitur.*

That *A.* aſſigned a Term of Years *prout patet, &c.* not good.

A **The** pleading that *A.* aſſigned a Term of Years to *B. prout per Indent', &c. produc', &c.* is not good, 2 *Lutw.* 1342. The pleading of an original Writ with *prout patet le brief, &c. Id.* 1643.

Ven. & defend. omitted is ill on Demurrer.

B **A Plea** that the Defendant *per M. S. Attorn. ſuum vim & injur. quando*, without ſaying *venit & defendit, &c.* it is ill upon Demurrer. 2 *Lutw.* 1386.

Treſpaſs againſt Baron and Feme, and the Wife only charged: *Ipſi non ſunt cul'* is ill.

C **In** Treſpaſs againſt Baron and Feme, in which the Wife is only charged with the Treſpaſs: They plead *quod ipſi non ſunt cul.* it is ill. *Id.* 1425, 1426.

Juſtification of an Arreſt without ſhewing out of what Court the Writ iſſued, is ill.

D **Juſtification** of an Arreſt by Warrant upon a *Capias*, without ſhewing out of what Court the Writ iſſued, is ill. *Id.* 1640.

In Treſpaſs for Damage-feaſant, he muſt ſhew his Title to the Cloſe.

E **Bar** in Treſpaſs for taking of Cattle Damage-feaſant; it is not ſufficient to ſay that he was poſſeſſed of the Cloſe, but he ought to ſhew his Title. *Id.* 1492, 1497.

Accord executed in Part, no good Plea in Treſpaſs.

F **Accord**, though executed in Part, is no good Plea to an Action of Treſpaſs and Aſſault. *Raym.* 203.

Several Pleas to ſeveral Treſpaſſes; if one be bad, the whole Plea is ill.

G **Several** Pleas to ſeveral Treſpaſſes; if one is bad, the Plea is bad in all. 2 *Lutw.* 1492.

Omiſſion of *Vi & armis* will not hurt, if the Words are in the Writ.

H **The** Omiſſion of *Vi & armis* in a Count in Treſpaſs in *B.* will not hurt if ſuch Words are in the Writ. *Id.* 1509.

Proper *Latin* Words muſt be uſed in pleading.

I **That** proper *Latin* Words ought to be uſed in Pleading. *Id.* 2518, 1519.

Thing pleaded as done 5 *Reginæ*, and the Queen alive, held ill.

K **Pleading** of a Thing to be done, *Anno* 5 *Reginæ*, when Queen *Mary* was alive, held ill. *Id.* 1604.

When Matters to be pleaded tend to Infiniteneſs, the Law allows a general Pleading.

L **When** Matters to be pleaded tend to Infiniteneſs and Multiplicity whereby the Rolls ſhall be incumbred in the Length thereof, the Law allows of a general Pleading. *Raym.* 8, 9, 10. And therefore in an Action upon the Statute of ſending Knights to Parliament, the Election ſhall be ſaid *per majorem numerum. Raym.* 9.

Where Plea of Payment is ill.

M **Condition** to pay to *D.* Plea of Payment according to the Condition, without ſaying to *D.* ill upon a ſpecial Demurrer. 3 *Lev.* 245.

No Plea need be received from one who is not an Attorney.

N **The** Plaintiff's Attorney is not bound to receive a Plea for the Defendant from any Perſon that is not an Attorney. *Paſch.* 23 *Car. B. R. Quære.*

A If the Plaintiff do put in a Replication to the Defendant's Plea, at any Time before the Iſſue joined, the Defendant ought to rejoin unto it, altho' it did not come in, in due Time, according to the Courſe of the Court. *Paſch.* 23 *Car. B. R.* For the Plaintiff doth only delay himſelf by not putting in his Replication ſooner, and the Defendant is not prejudiced thereby.

If Plaintiff put in a Replication before Iſſue joined, Defendant muſt rejoin.

B The Court at this Day will not direct any Perſon how to plead, although the Matter be difficult, though they be moved to do it, but will bid them plead at their own Perils: *Paſch.* 23 *Car. B. R.* For Counſel are to adviſe how to plead, and the Court is only to judge of the Pleadings, whether they are good in Law or not, and not to give Counſel to the Parties; but the Uſage was otherwiſe formerly, when the Serjeants counted at the Bar, and the Defendant's Counſel pleaded *Ore tenus* at the ſame Time; againſt which Pleadings the Plaintiff's Counſel excepted, (if they ſaw Cauſe) and this Matter came to be debated by the Counſel on both Sides; and alſo by the Judges upon the Bench; and upon hearing of the Opinion of the Judges they oftentimes waved or altered their firſt Pleadings and pleaded others; But when both Parties had heard the Opinion of the Court, if the Defendant reſolved to ſtand to his Plea, then the Court directed the Plaintiff to take Iſſue or demur upon it; ſo that upon a Demurrer joined the Cauſe might come to be judicially determined by them; and after either Iſſue or Demurrer joined, (all which was then done in Court) the Prothonotaries out of their Remembrances (which were Rolls wherein they took, in ſhort Notes, the Subſtance of the Declarations and Pleadings ſpoken by the Counters at the Bar) when they came to their Offices, ordered their Clerks in their Offices to draw it out in Pleadings at length.

The Court will not upon Motion direct any Perſon how to plead, though the Matter be difficult.

C Where a Matter is expreſly pleaded in the Affirmative, which is expreſly pleaded by the other Party in the Negative, the next ought to be an Iſſue and no Traverſe; for otherwiſe they will plead *in infinitum. Raym.* 199.

A Matter pleaded in the Affirmative by one Party, and by the other in the Negative, ought to be an Iſſue and no Traverſe.

D A Thing ought not to be pleaded by Implication, but in expreſs Words: *Trin.* 23 *Car. B. R.* For there can be no Iſſue taken upon it, becauſe it is not a direct Affirmative, to which a Negative may be pleaded; and Pleadings ought to be plain and direct to the Matter in Queſtion, and that is the Reaſon that all argumentative Pleadings are void.

A Thing may not be pleaded by Implication.

E If one plead a Deed, he muſt produce it in Court; but one may give a Deed in Evidence, although he cannot produce it, if he can make it out by Proofs that there was ſuch a Deed; and ſo he may do of a Record: *Trin.* 23 *Car. B. R.* For upon Pleading of a Deed, it is fit that the Defendant have a Sight of it, that he may know what Defence to make, which he cannot (it may

A Deed pleaded muſt be produced: But it may be given in Evidence, though it cannot be produced.

be)

be) do without a Sight of it; and every Plea ſhall be taken to be true, A
except it be denied; but an Evidence is not preſumed to be ſo, but is
believed or not believed, as the Circumſtances of Things do weigh with
the Jury, who are Judges of it. But if the Defendant
will ſwear that he never had a Part of the Indenture,
or that he hath loſt it, the Court, if they
think fit, may compel the Plaintiff to give him a
Copy, (at his Charges) but this is *ex gratia Curiæ*, B
non ex debito Juſtitiæ. 1 *Saund.* 9.

If Defendant will make Oath, That he never had a Part of the Indenture, the Court may compel the Plaintiff to give him a Copy.

Juſtification after Not-guilty, is ill.

A **If** one plead *Non cul.* to a Treſpaſs, and afterwards juſtify the ſame Treſpaſs, all the Plea is ill, 2 *Lut.* 1384.

When a Plea may be amended with Leave of the Court.

B **A Plea** may be amended upon Leave of the Court, if it be but in Paper and not entered, but the Party that amends it muſt pay Coſts unto the other: *Hill.* 23 *Car. B. R.* For it is not reaſonable that the Court ſhould grant him Favour to the Prejudice of the Party, who by this Amendment is put to new Trouble and Charge; but if the Plea be entered in Parchment, and the Record made up, the Court will not give Leave to amend it.

Officer of the Court cannot refuſe a Plea, though not put in in Time.

C **An** Officer of the Court ought not to refuſe a Plea, although it be not put in in Time, but the Plaintiff muſt move the Court, and abide by their Rule therein: *Hill.* 23 *Car. B. R.* For the Court, and not the Attorneys are to judge of the Legality of the Proceedings in all Cauſes depending before them, as well as they are to determine the Matters in Law in them.

One indicted of Treaſon or Felony may not be admitted to plead, till he has held up his Hand at the Bar.

D **One** that is indicted of Felony or Treaſon, ought not by the Law to be admitted to plead to the Indictment, until he hold up his Hand at the Bar: The holding up of his Hand is in the Nature of an Appearance, which ought to be recorded before Plea pleaded: *Paſch.* 24 *Car. B. R.* And alſo to the End that the Court, Jury, and People, may take the better Notice of the Priſoner.

One cannot plead a Pardon for Treaſon before he is indicted.

E **One** cannot plead his Pardon for Treaſon, until he is charged in Court with the Indictment of it: *Paſch.* 24 *Car. B. R.* For it muſt appear to the Court what the Crime is, before they can judge of the Pardon of it.

Miſnoſiner of the Plaintiff in Bar, ſhall not hurt.

F **Miſpriſion** of the Name of the Plaintiff in a Bar, *viz. præd. H. pro C.* ſhall not hurt. 1 *Lut.* 428.

Plea put into the Office, though not delivered to Plaintiff's Attorney, is well enough.

G **If** a Plea be put into the Office in due Time, it is well enough, although it be not delivered to the Attorney for the Plaintiff: *Trin.* 24 *Car. B. R.* So that he may not enter Judgment for want of a Plea; but it is uſual for the Defendant's Attorney to deliver a Copy of the Plea to the Plaintiff's Attorney, or to give Notice, that a Plea is put into the Office.

How Pleas are put into the Office.

A **Pleas** put into the Office are of two Sorts, general or ſpecial; general Pleas are entered in the general Plea-Book by every Attorney for his Client; but theſe are no Pleas, unleſs the Defendant's Attorney do pay the Plaintiff's Attorney upon Demand one Shilling and four Pence, or two Shillings and four Pence, (as the Cauſe is) for entering his Plea and Warrant of Attorney. Special Pleas are delivered in to the Clerks of the Papers, and entered into the Book of the proper Perſon to whom they belong.

A colourable Plea ought to be entered.

B **A colourable** Plea ought to be entered, but that which is no Plea ought not to be entered: *Trin.* 24 *Car. B. R.* For a colourable Plea is a Plea until it be over-ruled; for the Court will not ſpend Time to diſpute Things which are clear.

Declaration for Debt laid ſeveral Ways in an *Aſſumpſit*.

C **Tho'** it is frequent to lay a Declaration for a Debt, ſeveral Ways in an *Aſſumpſit*, yet it is not a good Plea to ſay, That the ſeveral Sums are but only for the Sum firſt mentioned, without Pleading over. *Raym.* 449.

Original Pleas may not be delivered out of the Office.

D **The** Clerks of the Papers of the King's Bench, ought not to ſuffer the Original Pleas brought into the Office, to be delivered out of the Office, but only Copies of them: *Mich.* 1649. *B. S.* For by the Pleadings in the Office are the Pleadings made up for the Iſſue to be tried; and if any Queſtion ariſe about altering of them, they are to be examined and rectified (if any Alteration be) by the Pleas in the Office, and not by any Copy of the Plea.

A Plea grounded on a Statute, if it be ill, is not helped after Verdict.

E **A Plea** that is grounded upon a Statute, if it be not good, is not helped after a Verdict: *Mich.* 1649. *B. S.* For the Statute being the Foundation of the Plea, if it be not well laid, the Plea is naught in the very Subſtance of it; and ſuch Pleas are not helped by the Statute of *Jeofails*. See the Statute.

If Defendant imparl, in an Action to recover Lands; yet he may after plead, That the Lands are Antient Demeſne.

F **If** an Action be brought in this Court to recover Lands, and the Defendant imparls; yet he may after Imparlance (as it hath been held) plead, That the Lands in Queſtion are Antient Demeſne, and demand Judgment, Whether this Court may hold Plea of them? For it ſeems by the Imparlance, he doth not affirm the Juriſdiction of the Court: But if he plead to the Defendant, and make a full Defence, he cannot after that plead to the Juriſdiction of the Court; for by Pleading he hath in Effect confeſſed the Juriſdiction of the Court: *Mich.* 1649. *B. S.* 8 *Apr.* 1650. *B. S. Paſch. Qu. tamen.* For it hath been doubted, and held it could not be after Imparlance: *Paſch.* 1650. 4 *Maii.* But the ſafeſt Way is to plead *Inſtanter* before the firſt four Days Rules are out.

Antient Demeſn is a good Plea on the Stat. 31 H. 8.

A **Antient** Demeſn is a good Plea on the Statute of 31 *H.* 8. *cap.* 1. of Partition. *Raym.* 249.

Defendant not bound to plead to an imperfect Declaration.

B **If** the Plaintiff's Attorney deliver an imperfect Declaration to the Defendant's Attorney, and he accept of it; yet he is not bound to plead, until the Plaintiff hath perfected his Declaration: *Mich.* 1649. *B. S. Paſch.* For until it be perfected, it is no Declaration; but he may well demur if he thinks fit, which is the uſual Practice.

If it be a Doubt whether a Plea be good or not, it cannot be determined upon Motion, but muſt be demurred to.

C **If** it be doubtful between the Parties whether a Plea be good or not, it cannot be determined by the Court upon a Motion made, that the Court would deliver their Opinions whether it be good or not, but there ought to be a Demurrer upon the Plea; and upon hearing of Arguments thereupon, the Court is to judge whether that Plea be good or bad: *Hill.* 1649. *B. S. Jan.* 26. For the Court will not upon the ſudden, and without Deliberation, deliver their Opinions in Things which are dubious in Law, neither can they properly give their Judgment but upon ſomething appearing before them upon Record.

When an Indenture muſt be pleaded with an *In Curia prolat.* and when not.

D **If** an Indenture be only pleaded by way of Inducement, it is not neceſſary to ſay, *per Indenturam ſuam in Curia hic prolat'*; but if the Party do derive any Title unto himſelf by the Indenture pleaded, he muſt plead it ſo: *Hill.* 1649. *B. S. Jan.* 26. That the Court may judge whether the Title he makes by the Indenture be warranted by it, and that the other Party may conſider what Anſwer to give unto it; for a bare Inducement to a Plea requires no Anſwer to it, becauſe it is not of the Subſtance of it.

In Dower, that the Baron aliened, is good.

E **In** Dower, a Plea that the Baron alienated to the Tenant, is as good as *Feoffavit.* 3 *Lev.* 220.

When Defendant ought to plead, if the Cauſe be removed from the Sheriff's or Marſhal's Court.

F **If** an Action be brought in the Sheriff's Court in *London*, or Marſhal's Court in *Southwark*, and be afterwards removed by a *Habeas Corpus* into this Court, the Defendant ought to plead the ſame Term the Cauſe is removed, and proceed to a Trial: *Hill.* 1649. *B. S.* 9 *Feb.* For the Court will not grant the Party to take any Advantage by the removing of the Cauſe hither, to delay the other Party in the Courſe of his Proceedings, which would be, if he ſhould not be compelled to plead the ſame Term the Cauſe was removed. Alſo he is ſuppoſed to have ſufficient Notice of the Cauſe of Action, that appearing in the Plaint levied in the inferior Court; ſo that he may have Time enough to provide for his Plea during the bringing of his *Habeas Corpus*, and his putting in of Bail, and the Plaintiff's declaring and giving of Rules to plead.

A **If** the Bar be good, and Rejoinder ill, yet Judgment for the Defendant: 1 *Lev.* 31. and 3 *Lev.* 23. Of a Matter at Common Law not maintained by Statute or Cuſtom. Matter of Statute maintained by another Statute. *Id.* 81.

Bar good, Rejoinder ill, yet Judgment for the Defendant.

B **No** pleading Execution without pleading the Judgment, nor Execution without ſhewing by what Title. *Ibid.* 83.

Execution, how to be pleaded.

C **A Perſon** need not plead more of a Deed than what makes for him. *Ibid.* 88.

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D **Where** *Eo quod* is an Affirmation, *ſcilicet, &c.* repugnant to the Matter precedent, void, as well upon Demurrer, as after Verdict. *Ibid.* 195.

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E **Pleading** of a Suit depending, without ſhewing in what Court, is ill upon a general Demurrer; but cured by a pleading over, which admits the Suit depending. *Ibid.*

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F **If** the Plaintiff's Attorney will conſent unto it, the Defendant may wave his Plea pleaded, without moving the Court; by *Rolle* Chief Juſtice: *Trin.* 1651. *B. S.* But if he will not conſent, it cannot be done without moving the Court; for the common Courſe of proceeding is not to be altered but by Leave of the Court, which upon Cauſe ſhewn, the Court will ſometimes give Way unto, if the doing of it be not very prejudicial to any Party.

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K **In** Debt for Rent of four Rooms, the Defendant pleads a Leaſe of five Rooms, and Eviction of the fifth; it is not good without a Traverſe. *Raym.* 175. *Vide eund.* 182.

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When the Defendant muſt plead if a Declaration be delivered to a caſual Ejector, before the Eſſoin-Day.

A **In** the Caſe of *Cobb* and *Webb*, *Trin.* 1659. By the Court. If a Declaration be delivered to a careful Ejector before the Eſſoin-Day, if the Tenant in Poſſeſſion will defend the Title, he ought ſo to plead, that a Trial may be had the next Term, and ought not to imparl; but if it be delivered after the Eſſoin-Day, altho' by Original, the Court will not force him to appear and plead of that Term. See Title **Ejectment, *&c.***

Pleadings made up and paid for, ſhall be accounted as enter'd.

B **Upon** a Motion betwixt *Briskoe* and *Arnold*. By *Glyn* Chief Juſtice. When Pleadings are made up and paid for, they ſhall be accounted as if they were entered; for the Entry belongs to Clerks in the Office, and not to the Attorneys.

If Declaration be delivered after the Eſſoin-Day, Defendant cannot be compell'd to plead to try it that Term, but muſt plead to enter.

C **If** a Declaration be delivered to the Defendant's Attorney, or put into the Office after the Eſſoin-Day of the Term, the Defendant cannot be compelled to plead to try it that Term, but he ought to plead to enter: 1652. *B. S.* For the Term was begun when the Declaration was delivered, and it cannot be accounted a Declaration of the preceding Term, for the Eſſoin-Day is part of the Term. See Title **Declaration.**

How to begin Pleadings.

D **As** Policy and Order inſtructeth a Man, firſt to ſkirmiſh and practice ſome ſlight Defeats before he joins Battle: So we begin, firſt with Pleas to the Juriſdiction of the Court, then to the Perſon, then to the Writ, then to the Action of the Writ, and then to the Action it ſelf. *Hob.* 164. See *Co. Lit.* 303. *a. b.* See *Latch* 178, 179.

What the Law requires in Pleadings.

E **The** Law requires in every Plea two Things, the one, That it be in Matter ſufficient; the other, That it be deduced and expreſſed according to the Forms of the Law, if either of theſe be wanting, it is Cauſe of Demurrer. *Hob.* 164.

Pleadings muſt be in *Latin.*

36 **Ed.** 3. **cap.** 15.

F **Heretofore** all Pleadings were to be in *Latin: Lutw.* 63. They muſt be pleaded in *Engliſh* and inrolled in *Latin.* 36 *Ed.* 3. *cap.* 15. but now altered by the late Statute.

Every Man ought to plead what is pertinent to his Caſe.

G **It** is a Maxim in Law, That every Man ought to plead that which is pertinent for him and his Caſe. *March* 169, 173.

How Letters Patents muſt be pleaded.

H **Letters Patents** muſt in pleading be ſaid to be *Magno ſigillo Angliæ ſigilla*, and to ſay *Hic in Curia prolat'* only, is not ſufficient. 3 *Leon.* Caſe 240.

Rules to be obſerved, as Principles in Law in pleading.

I **It** is a general Rule, That if he who pleads in Bar is proſcribed to a certain Time, he ought to ſhew the Day of his Act certainly.

K **But** he who pleads in the Negative, need not plead certainly: But he who pleads in Abatement of a Writ or Plea, *Puis darrein Continuance*, ought to plead certainly. 1 *Plow.* 33.

A **It** is a Rule in Law, That every Plea ought to anſwer the Matter which is charged upon the Defendant in the Declaration, where he tells all his Caſe: But if he omits any Part of it, the Defendant may then tell where the Omiſſion is. 2 *Mod.* 75, 76.

Every Plea ought to anſwer the Matter in the Declaration.

B **Where** the Defendant is not conſtrained to plead a Special Plea, he may plead the General Iſſue proper for the Action brought, and give the Special Matter in Evidence: *Hill.* 23 *Car. B. R.* For every Plea muſt be ſo framed, that it may give a full Anſwer to the Matters ſet forth in the Declaration, to wit, all ſuch as are material to be anſwered unto; and if it do ſo, it is a good Plea, be it a general Plea or a ſpecial.

If Defendant be not conſtrained to plead a Special Plea, he may plead the General Iſſue.

C **Where** the Law gives a Man a Licence to do a Thing, he muſt in Treſpaſs plead it, and cannot give it in Evidence. *Mod. Caſes* 69.

In Treſpaſs a Licence in Law muſt be pleaded, and cannot be given in Evidence.

D **In** pleading, That *A. B.* by Indenture, *Dedit, conceſſit, alienavit, relaxavit & confirmavit* to *C. D.* whereas he ought to have pleaded only one of them, and not all of them, was, upon a Special Demurrer, held naught by the Court; becauſe *Conceſſio, Relaxatio, &c.* require ſeveral Pleas; for *Non Conceſſit* is not a good Anſwer to all of them: *Pawlyn & Hardy, Mich.* 32 *Car.* 3. *Rot.* 90. *B. R.* 3 *Lev.* 292. *Palm.* 87. And ſo it was adjudg'd. *Paſch.* 13 *W. B. R.* In pleading of a Releaſe and Confirmation, and upon a Demurrer for Duplicity, and not being ſhewn particularly for what Cauſe, the Chief Juſtice ſaid, That the Plaintiff had not demurred as he ought; for he ought to have ſhewn in what it was double, *viz.* in his pleading both the Releaſe and Confirmation; whereas either of them would have done: But as the Demurrer was general for Duplicity, ſaying no more, it ſhall extend no farther than a general Demurrer only.

How to plead a Releaſe upon a Leaſe for a Year.

Where a Demurrer mentioning Duplicity, ſhall extend only to a General Demurrer.

E **No** Advantage can be taken of double Pleading, without a Special Demurrer. *Lutw.* 422. *Vide* Statute 4 & 5 *Annæ.*

No Advantage of double Pleading, without a ſpecial Demurrer. 4 & 5 Annæ.

F **Where** a Declaration is ill, if the Defendant pleads other Matter which admits that Matter ſet forth ill in the Declaration, then that hath made the Declaration good. 3 *Lev.* 393.

Where the Defendant's Plea makes bad Declaration good.

G **An** Award pleaded *Cujus tenor ſequitur*, and ſo pleaded *Verbatim*, is naught; for it muſt be pleaded in *Latin*. *Aleyn* 87.

An Award muſt be ſet forth in *Latin*.

H *Tranſgreſſionem prædict.* is an Anſwer to an Aſſault and Battery. 1 *Lev.* 34.

Tranſgreſ. prædict. is an Anſwer to an Aſſault and Battery.

I **Where** the Plaintiff makes a Title by his Replication, and it appears by it that he has no Title, no Rejoinder by Admittance can make this good; But where he makes a Title by his Replication,

Where a Rejoinder may make a bad Replication good, and where not.

though he doth not plead it as he ought, the Rejoinder admitting of this Matter, and tendering an Iſſue of other Matter, makes this good. 1 *Lev.* 195.

A Replication *de ſon Tort*, is no Anſwer to a Plea which contains a Title.

Where a Plea in Bar contains a Title, a Replication *de ſon Tort ſans tiel Cauſe*, is naught. 1 *Lev.* 307. A

A Man can never plead any Thing afterward, which he might have pleaded at firſt.

A Releaſe after Verdict, and before Judgment, may not be pleaded.

A Man can never plead any Thing afterwards, which he might have pleaded at firſt: For if a Man have a Releaſe, and an Action is brought againſt him, he cannot, after pleading the General Iſſue, make Uſe of this Releaſe; but he may at the *Niſi prius* plead a Releaſe, *Poſt ultimam continuationem placiti*, which was made after the Iſſue joined: But where a Releaſe is made after Verdict, and before Judgment, the Defendant cannot plead this Releaſe, but may bring his *Audita Querela* upon it. B

How to plead in Treſpaſs where the Matter is Local, and where Tranſitory.

How to plead in Treſpaſs where the Matter is Local, and how where it is Tranſitory. *Lut.* 1437, 1438, 618, 619. C

Where, upon a Judgment and a Releaſe, the Heir and Tertenants being ſummoned, make Default, they ſhall be perpetually barred.

Where the Plaintiff gives the Defendant a Releaſe of all Judgments and Executions, and afterwards the Defendant dies, and the Plaintiff ſued out a *Sci. fa.* againſt the Heir and Tertenants of the Defendant, and the Tertenants are returned ſummoned, and do not appear and plead this Releaſe, but Judgment is entered againſt them by Default; they ſhall never in Law or Equity have any Benefit, or make any Uſe of this Releaſe: But in Caſe of a Releaſe of all Judgments and Executions, and *Sci. facias*'s are ſued out, and two *Nichils* returned, there the Defendant ſhall not loſe the Benefit of his Releaſe: Becauſe the two *Nichils* are but a Notice in Law, and he ought in this Caſe to have an actual Notice. D

Solvit ad diem is a good Plea to an old Bond.

Solvit ad diem is a good Plea to a Bond of twenty Years ſtanding, and no Intereſt paid or Demand thereupon, or good Cauſe ſhewn for Forbearance. *Mod. Caſes* 22. E

No good Plea to ſay, *Talis Indentura*.

To plead *Talis Indentura qualis* in the Declaration is alledged, is no direct Anſwer to the Indenture mentioned in the Declaration; for *Talis Indentura non eſt eadem Indentura*, for *Nullum ſine eſt idem*. 4 Rep. 18. b. F

How to plead to Actions for Words.

How to plead in Actions on the Caſe for Words. See *Danv. Abr.* 170, 171, 172. G

Whether *Molliter manus impoſuit* is a good Juſtification for an Arreſt.

In Battery the Defendant juſtifies, That *Molliter manus impoſuit* to arreſt him, whether good or no. 3 *Lev.* 404. H

When a Priſoner or privileged Perſon may plead in Abatement.

Upon a Declaration filed againſt a Priſoner or a privileged Perſon, the Defendant ſhall have Liberty to plead in Abatement at any Time during the eight Days Rules: But where a Declaration is delivered I

or

or filed before the Eſſoin-Day of the Term, there the Defendant muſt plead in Abatement within the firſt four Days of the Term, and not after the End of four Days, whether Rules are given or no. *Mich.* 8 *W.* 3. *B. R.*

A **If** the Plaintiff alters his Declaration after the Defendant hath pleaded to it, the Defendant may alter his Plea: For by the Amendment of it, it may be ſo altered in Matter, that it may require a different Anſwer from what was formerly pleaded.

The Defendant may alter his Plea, where the Plaintiff alters his Declaration.

B **If** a *Sci. fa.* upon a Recognizance be brought againſt an Infant, he cannot plead Infancy or Nonage to it: For a Recognizance is in the Nature of a Judgment, and the *Sci. fa.* is grounded upon it: But he muſt bring his *Audita Querela*, and ſet forth his Caſe therein, and thereby his Age ſhall be tried by the Court's inſpecting of him, and Proof of Witneſſes and Regiſter-Book, and not by a Jury.

An Infant cannot plead Infancy to a *Sci. fa.* upon a Recognizance, but muſt bring his *Audita Querela.*

C **In** a *Clauſum fregit* the Defendant pleads a Bar to make the Place certain: The Plaintiff ſays, That the Place is ſuch, and aſſigns it in certain, other than what the Defendant juſtifies: The Defendant ſays, That one and the other are known by one Name and the other. The Plaintiff demurs; and adjudged for him. See the Book, *Fenner*'s Caſe, *Poph.* 9.

Where in a new Aſſignment the Defendant ſays, That they are both known by one Name, and how to be.

D **To** plead *Quod apparet* by ſuch a Deed or ſuch a Bond, that three were jointly bound, and the Action is brought but againſt two (or any ſuch other Matter) is ill Pleading: But he ought to aver in Fact, That three were jointly bound, and that the Perſon not named is living. 10 *W.* 3. *B. R.*

To plead *Quod apparet* by ſuch a Deed, is ill Pleading.

E **A Deed** pleaded by *Teſtatum exiſtit*, is no poſitive Pleading, but ill. 2 *Lev.* 75. So it is in a Declaration in Covenant. 2 *Lev.* 12. But it is good in Debt. 2 *Lev.* 74, 75. 1 *Lut.* 535, 877.

A Deed pleaded by *Teſtatum exiſtit*, is ill; ſo in a Declaration in Covenant; but it is good in Debt.

F **The** Manner of Pleading a Fine. 2 *Lev.* 31.

The Manner of pleading a Fine.

G **Of** a Common Recovery pleaded without Execution, how it ſhall enure. *Ibid.*

Of a common Recovery.

H **Of** a Feoffment to Uſes. *Plow. Com.* 38. *b.* 39. *a.* *Wimbiſh*'s and *Talbot*'s Caſe.

Of a Feoffment to Uſes.

I **It** hath been adjudged a good Plea in a *Sci. fa.* brought againſt an Executor, upon a Judgment entered into by his Teſtator, to plead Fully adminiſtred: But I take it not to be a good Plea, unleſs it be a ſpecial *Plene adminiſtravit*, by Payment of Judgments.

How an Executor to plead to a *Sci. fa.* Fully adminiſtred.

K **If** one be ſued upon an Obligation, he cannot be compelled to plead before he hath Oyer of the Condition of the Obligation, and a Copy (if required)

No Man is bound to plead to a Bond, before Oyer of the Condition.

to be made at his own Charges; becauſe he cannot tell what to plead, 'till he know for what he is ſued.

Nil debet may be pleaded upon an Indenture.

A **In** an Action of Debt brought for Rent upon an Indenture of Demiſe for Years, the Defendant may plead *Nil debet*: But it is no Plea in Covenant for Rent or Money. 3 *Lev.* 170. And in 3 *Lev.* 396. it is made a Query, whether he may plead it in Debt upon a Judgment?

When a Dilatory Plea muſt be pleaded.

4 & 5 **Annæ.**

B **How** and when Dilatory Pleas may be pleaded. See the Statute of 4 & 5 *Annæ*, and Title **Abatement.**

How to plead a General Plea.

What makes the Iſſue.

C **When** a General Plea is pleaded, the Attorney ought to ſet his Hand to the Plea, or enter it in the General Plea-Book, and pay for the Entry of it; and then the Iſſue is joined: But if he will not ſet his Hand to the Plea, and pay for the Entry of it, Judgment may be entered for want of a Plea; for the Attorney's Hand, and his paying of his Part for the entering of it, and of the Warrant of Attorney, warrants the Plea; and before his Hand is ſet to it, it is no Plea: So likewiſe in the Caſe of a Paper-Book, the Defendant muſt ſet his Hand to it, and pay for the Entry of it: But if it be a Special Plea, Replication, Rejoinder or Demurrer, there muſt be a Counſellor's Hand to it; becauſe it is ſuppoſed to be adviſed by Counſel, who is to maintain it to be good, if it be diſputed.

When to plead upon an Action brought by Original.

D **If** one be ſued by Original Writ, he muſt plead the ſame Term in which the Original is returned; if the Defendant be arreſted by a *Capias*, containing in it the Cauſe of Action exactly as the Original is, if ſuch *Capias* be returnable the ſame Term with the Original: But whenſoever the *Capias* is returnable, the Defendant muſt plead within four Days, if required: And the Reaſon thereof is becauſe the ſpecial Matter is contained in the Writ whereof the Defendant hath Notice upon the Arreſt.

Not ſo, where it is by Bill.

But it is not ſo where one is ſued by *Latitat*, or Bill of *Middleſex*; for if they be *De placito transgreſ.* yet the Plaintiff may declare in Debt, or what other Action he will: But in the other Caſe, the Declaration muſt not vary from the Writ; if it doth, the Defendant may plead in Abatement.

Not guilty no Plea to a Non-feaſance.

Where it ſhall be a good in an *Aſſumpſit*.

E **Not guilty** is no Plea to a Non-feaſance; for they be two Negatives, which cannot make an Iſſue. *Cro. Eliz* 569. *pl.* 4. *Moore*, Caſe 481. See Title **Aſſumpſit,** where Not guilty was pleaded to an *Indebitatus aſſumpſit*, and held good after a Verdict.

Not guilty is a good Plea to an Action of Debt upon 2 **E.** 6. **cap.** 13. and why.

F **Not guilty** is a good Plea in an Action of Debt for Tithes upon the Statute of 2 *E.* 6. *c.* 13. for it is not a Non-feaſance, but it is a Miſ-feaſance, wherein a Tort is ſuppoſed. *Cro. Eliz.* 766. *pl.* 5.

Where the Iſſue may be *Non cul.* or *Nil debet*.

G **In** an Action upon a Statute which prohibits a Thing, upon which a Penalty is demanded, the Iſſue may be *Non cul.* or *Nil debet*. *Ibid.*

A To a *Sci. fa.* againſt Bail, they plead, That the Principal *Reddidit ſe* before the Return of the ſecond *Sci. fa.* and ſays not *Et hoc paratus eſt verificare per Recordum*, and therefore naught. 3 *Lev.* 152.

How the Bail muſt plead a *Reddidit* to a *Sci. fa.*

B Where an Action of Falſe Impriſonment was brought, the Defendant juſtified, and ſet forth, That a *Capias ad Satisfaciendum* was delivered to the Sheriffs of *London* againſt the Plaintiff, and that a Warrant was directed to *J. S.* Serjeant at Mace to take the Plaintiff thereupon: And then he ſays, That he *per Mandatum & in Auxilium* of the Serjeant took the Plaintiff and impriſoned him, *Prout ei bene licuit*; and upon a Demurrer it was held to be a good Plea: And it was held, That the Defendant need not ſet forth the Judgment, but only the *Capias ad Satisfaciendum*: But if the Plaintiff in the Judgment had been ſued, he muſt ſet forth the Judgment. Alſo it was held, That if the Judgment or Execution were erroneous, yet that ſhall not make the Officer liable to an Action; for he is a Miniſterial Officer, and muſt only execute, and not diſpute the Proceſs of the Court. *Hill.* 5 *W. & M. B. R.*

An Officer who takes a Man upon a *Ca. ſa.* need not (if ſued) plead the Judgment: But the Plaintiff in the Judgment (if ſued) muſt.

But the Plaintiff muſt.

Although the Judgment were erroneous, yet the Officer ſhall be excuſed.

C An Entry muſt be pleaded after a Remainder is happened. *Plow. Com.* 23. *b.*

How to plead a Remainder happened.

D A Preſcription cannot be pleaded againſt a Preſcription: But the Preſcription alledged muſt be anſwered. *Cro. Car.* 432. *pl.* 2.

A Preſcription cannot be pleaded againſt a Preſcription.

E A Recovery in Ejectment is a good Bar to an Action of Treſpaſs: For by a Recovery in Ejectment the Poſſeſſion is bound. 3 *Leon.* Caſe 242.

A Recovery in Ejectment is a good Bar in Treſpaſs.

F The *Statute of Limitations* is no good Plea where the Eſtate in Law is in *Truſtees*. *Mod. Caſes in Law and Equity* 33.

Statute of Limitations.

G See a Decree in the Exchequer pleaded, but over-ruled. *Ibid.* 109.

Pleading a Decree.

H *Placitum eſt nomen Collectivum.* Salk. 219. Comberb. 239. And are to be certain to a general Intent. *Comberb.* 64.

What a Plea is, and of its Certainty.

I On a *Habeas Corpus* returnable in *Mich.* Term be delivered before *Craſ. Animar.* the Defendant muſt plead to try; but on a *Cepi Corpus* he is only to plead to enter. *Ibid.*

When to plead to enter.

K And ſo in *Eaſter* Term, if the Declaration be delivered before *Menſem. Paſch. &c. Ibid. Vide* 518.

The like.

L On *Informations* in *Middleſex* the Defendant has the whole Term to plead. *Salk.* 514.

Informations in *Middleſex.*

M But if laid in the Country he ſhall have Time till the following Term. *Ibid.*

In the Country.

To a Priſoner.

To a Declaration delivered againſt one in Cuſtody, ſhe ſhall have the whole Term to plead in Abatement. *Salk.* 515. A

To Bills againſt Officers, *&c.*

But upon filing Bills againſt Officers and Clerks, 'tis ſufficient if there be four Days within Term to plead. *Ibid.* 517. B

Computation of the Time to plead.

And *Note, Sundays* and *Holidays* are to be reckoned as well as the Day of filing the Bill. *Ibid.* C

When no new Rules.

No new Rules need be given to plead after an Amendment, unleſs an Imparlance be given. *Salk.* 517. D

Pleas in Abatement.

Pleas in Abatement, as *Miſnoſmer, &c.* not pleadable after an Imparlance. *Ibid.* E

When not to plead in Abatement.

After the Bail-Bond forfeited, the Defendant can't plead in *Abatement* of the original Action. *Ibid.* 519. F

Voluntary Appearance.

When and how a Defendant ſhall plead after a *voluntary Appearance* on a *Cepi* returned. *Ibid.* 518. G

Pleading in Ejectment.

If Judgment in Ejectment be ſigned for want of a Plea in a Country Cauſe, but no Poſſeſſion delivered, the Plaintiff may be compelled to accept of a Plea; *contra* if Poſſeſſion delivered. *Ibid.* 516. H

Judgments to be ſet aſide.

A Judgment may be ſet aſide tho' ſtrictly regular, in Order to try the Merits by pleading. *Ibid.* 518. I

Waver of Special Plea.

Before a Joinder in *Demurrer* the Defendant may wave his Special Plea, and plead the *general Iſſue. Ibid.* 515. K

Where not.

Contra, where a Rule is to plead ſo as to ſtand by it, and he pleads *ſpecially*, and the Plaintiff *demurs. Ibid.* L

Peremptory Plea.

The Court will never order a Man to plead peremptorily, till the Rules for pleading are out. *Salk.* 516. M

Where not Advantage on a Plea over.

Nothing can be taken Advantage of on a Plea over, which cou'd not be on a general Demurrer. *Ibid.* 519. N

Frivolous or ſham Pleas.

'Tis againſt the Duty of Council, and the Stat. *Weſt.* 1. *cap.* 29. to ſign frivolous or ſham Pleas. *Ibid.* 517. O

When to ſwear to a Plea.

An Attorney can't be compelled to ſwear his Plea, but where 'tis a *foreign Plea. Ibid.* 515. P

To be fined.

But if he puts in a falſe or frivolous Plea in Deceit of the Court, he may be fined. *Ibid.* 515, 516. Q

Parol Award, and Parol Uſes.

A Parol Award may be pleaded ready to be delivered, and Parol Uſes averred. *Ibid.* 75, 676. R

A **Several** *Bars* may be pleaded to ſeveral Parcels of a Debt on Bond. *Salk.* 180.

Several Pleas.

B **But** one Defendant can't plead two Pleas that go to the whole. *Ibid.* 218.

The like.

C **A Plea** to the Juriſdiction is well in the Negative, and *Venit & dicit*, or *dicit* only, is a good Defence. *Ibid.* 30. 543, 544. *Skin.* 582. 3 *Salk.* 171.

Venit & dicit, or *dicit* only.

D **Tho'** the Bond of an *Infant*, or of one *non compos* is void, yet they can't plead *non eſt factum*. *Salk.* 427, 675.

Infant and *Non Compos*.

E *Teſtatum exiſtit* is no Averment, and only a Recital. *Ibid.* 515.

Teſtatum exiſtit.

F *Onerari non debet* is proper only where there never was a Charge. *Ibid.* 516.

Onerari non debet.

G **In** Debt on a Judgment the Declaration may be without *prout patet per Recordum. Ibid.* 566. So in an Action of Eſcape. *Comberb.* 299. At moſt 'tis but Matter of Form.

Prout patet per Recordum.

H **A Negative** Plea need not conclude *prout patet per Recordum. Salk.* 520.

The like.

I **And** if a Record be pleaded, tho' no ſuch Concluſion, yet the other may reply *nul tiel Record. Ibid.*

The like.

K **Where** the Plea is in *Abatement*, the Replication muſt conclude to the Country. *Salk.* 2.

Concluſion.

L **An** *Adminiſtrator* did not ſet forth the *Letters* of *Adminiſtration*, but the Defendant having pleaded *non eſt factum inteſtati*, it made the Declaration good. *Mod. Caſes in Law and Equity*, 306.

What Plea made the Declaration good.

M **Where** the Condition is in the Disjunctive, the Defendant may plead *Performance* of either Part; and if one Part be falſified in Pleading, the Plaintiff muſt have *Judgment*. *Ibid.* 349.

Of pleading Performance.

N **Where** a Time and Place of doing is made certain by the Agreement, he who pleads a *Tender* muſt alſo plead a Refuſal by the other; and if he be not preſent, that muſt be ſhewn. *Ibid.* 106.

Of pleading a Tender.

O **A Plea** in Bar that he gave a Note of 20 *l.* in full Satisfaction of the Debt, and on Demurrer held ill; for a Note ſo given is a Diſcharge of a Debt or Duty. *Ibid.* 290.

Of a Note in Satisfaction.

P **After** *Not Guilty* pleaded, the Defendant can't juſtify or plead ſpecially. *Ibid.* 305.

Of pleading Not Guilty.

Q **Where** *Nil debet* is a good Plea, and where not. *Ibid.* 106, 323, 381.

Nil debet.

R **In** Treſpaſs for entring his Land, taking his Hopps, and deſtroying his Poles; Defendant

Juſtifying a Diſtreſs, ill.

juſtifies, that the Ground was his own, and that he took the Poles Damage Feaſant, and by Pleading confeſs'd the deſtroying them, and on a *Demurrer* adjudged for the Plaintiff, for the Defendant can't juſtify deſtroying a Thing diſtrained. *Mod. Caſes in Law and Equity,* 330.

Traverſe immaterial.

A **Where** the *Juſtification* is good, tho' the Traverſe is immaterial. *Ibid.* 31.

Payment.

B **Where** *Payment* before the Day, may be pleaded as paid at the Day. *Ibid.* 345.

Time to plead denied.

C **An** Executor was denied Time to plead, unleſs he would enter into a Rule not to plead any Judgments. *Ibid.* 308.

Not to amend the general Errors.

D **After** in *nullo eſt erratum* pleaded, 'tis never allowed to amend the general Errors. *Ibid.* 304.

Time to plead.

E *Sunday* is not reckoned one of the four Day's Time to plead. *Ibid.* 21.

Principal and Bail.

F **The** *Principal* and *Bail* cannot join in a Plea. *Ibid.* 289.

Prout patet, &c.

G **Where** a Plea need not conclude *prout patet per Recordum.* *Ibid.* 30.

Recuſancy.

H **See** of Recuſancy pleaded in Diſability of the Plaintiff. *Ibid.* 44, 45.

I **Tender,** how to be pleaded, and when to be made. *Ibid.* 69, 70, 71, 218, 219, 292.

Statute of Limitations.

K **See** of the Statute of Limitations pleaded, 109, to an Aſſignee of Commiſſion of Bankruptcy. *Ibid.* 171.

General Iſſue.

L **Where** the Defendant may plead the *general Iſſue,* and give the Special Matter in Evidence. *Ibid.* 120.

Non Aſſumpſit.

M *Non Aſſumpſit* is no good Plea to an Action brought againſt a Common Carrier. *Ibid.* 178.

Proof lies on the Defendant.

N **Where** the *Plea* is in the *Affirmative,* the Proof lies on the Defendant. *Ibid.* 180.

Original miſtaken for Bill.

O **Plea** of *Aſſets die impetrationis brevis original,* is when the Proceedings were by Bill, is ill. *Ibid.* 288.

Plea in Chief.

P **Where** a Defendant ought to plead in chief, *&c.* *Ibid.* 289.

Cuſtoms.

Q **Cuſtoms,** &c. how to be pleaded. *Ibid.* 297, 298, 300.

Where Plea ill.

R **A Plea** not anſwering the Declaration, is ill, *&c.* *Ibid.* 330.

Rejoinder ill.

S **So** where the *Rejoinder* did not anſwer the Replication, the Plaintiff had Judgment. *Ibid.* 343.

To a Bond for Gaming.

T **Of** Pleading, *&c.* to a Bond for Money won at Play. *Ibid.* 57.

Quare Impedit.

U **In** a *Quare Impedit,* Plenarty is no good Plea to bind the King's Right. *Ibid.* 8.

A **In** Dower *uncore priſt* is a good Plea where an actual Aſſignment is made. *Mod. Caſes in Law and Equity* 25.

Uncore Priſt.

B *Collateral Matter* pleaded to a Declaration where the Demand is ſet forth, may make it good. *Ibid.* 356, 70, 71.

Declaration made good by Plea.

C **But** to a Plea in Bar it muſt conclude *& hoc paratus eſt verificare.* 2 *Vide* 629.

The like.

D **In** Replevin in another Place muſt not conclude *petit judicium*, and to have a Return. *Salk.* 3.

Concluſion in Replevin.

E **Plea** of taking by Diſtreſs does not confeſs property. *Ibid.* 640.

Diſtreſs.

G **In** *Treſpaſs, &c.* juſtifying under a Writ is not enough to ſhew where returnable, without ſhewing whence it iſſued. *Ibid,* 517, 545.

Juſtification.

H *Performance* muſt be pleaded in the very Words of the Condition; *aliter* of an Excuſe. *Ibid.* 520.

Performance.

I **A Plea** on the Statute for Diſcharge of poor Priſoners, ought to ſhew all the Qualifications and Circumſtances to bring a Defendant within the Act. *Ibid.* 521.

Plea of Poor Priſoners.

K **Where** a Statute creates a new Thing in Writing, it muſt be ſo pleaded, but where it only adds it to a Common Law Matter it need not. *Ibid.* 519.

Pleading a Statute.

L **Where** a Plea ſhall conclude with a *Profert, &c.* 73. *bis* 545, 584.

M **A Plea** delivered as an *Eſcrow*, muſt conclude to the Country. *Salk.* 274.

Eſcrow.

N **Where** Tertenants may not join in a Plea to *Sci. fa. Ibid.* 601.

Tertenants.

O **Difference** in pleading Seiſin between *Tenants* in Common and *Parceners.* See *Salk.* 630.

Tenants in Common, and Parceners.

P **Concluding** with *hoc paratus eſt verificare*, where good, and where not. 3 *Salk.* 208, 209.

Hoc paratus eſt verificare.

Q **Where** there are two Affirmatives the Concluſion muſt be *Et hoc paratus eſt verificare. Ibid.* 210.

The like.

R **Where** the Concluſion of a Plea makes a Diſcontinuance. *Ibid.*

Diſcontinuance.

S **Where** there is an *Affirmative* to a *Negative*, yet if the Matter is new, the Party muſt not conclude to the *Country.* 3 *Salk.* 211.

Concluſion *per patriam.*

T **Pleading** (*inter alia*) is not good, becauſe too general. *Ibid.* 271, 302.

Inter alia.

U **Where** a Plea amounts to the general Iſſue, 'tis not good. *Ibid.* 272.

A Plea amounting to the General Iſſue.

X **What** Pleas do not amount to the General Iſſue. *Ibid.* 273, 274.

Y **Where** a Plea in the *Negative*, and without a full Defence, is good. 3 *Salk.* 282.

Negative Plea.

Pleading *Inſtanter.*

A **Where** the Defendant ſhall be compelled to plead *inſtanter*, where not. *Carthew* 266, 320.

Another Action depending.

B **Of** another Action brought for the ſame Cauſe, and Judgment in that Action. *Ibid.* 455, 456.

Double Plea.

C **Whether** when the Words in a Deed are ſufficient to paſs a Thing by ſeveral Means, and they are pleaded generally without ſhewing any Election which Way the Thing paſſes; this be a double Plea. *Skin.* 63.

Ouſter le merc.

D *Ouſter le mere* a good Plea upon the Statute of 23 *Eliz.* *Ibid.* 99.

Breach of a Recognizance.

E **The** Condition of a Recognizance that the Principal ſhall pay the Money, or render himſelf, and a Breach aſſigned that he had not rendered himſelf, ill. *Ibid.* 100.

Another Action pleaded in Bar.

F **Where** the Declaration is ill, and upon Demurrer Judgment for the Defendant; and after the Plaintiff brings an Action, the Defendant cannot plead the *former Action in Bar*; but where there is a *Judgment* upon a *Demurrer* to a Plea, or upon a *Verdict* or *Confeſſion*, he may. *Ibid.* 120.

When the Action ſo attach'd, ſo that performing the Covenant is no Plea.

G **Leſſee** of an Houſe covenants to repair, uphold, *&c.* the Houſe is burnt without his wilful Act, and the Leſſee within convenient Time rebuilds it, this is a Breach of the Covenant, and rebuilding within convenient Time, is no good Plea in Bar, the Action being attached. *Ibid.* 211.

A Plea ill for not ſhewing how the Letters Patents became void.

H **Action** of Debt upon a Bond, the Defendant demands Oyer of the Condition, and pleads, that certain Letters Patent granted to the Plaintiff, and recited in the Condition *Vacuæ devenerunt ante diem ſolutionis pecuniæ, ſcil.* 13 Dec. *& adhuc vacuæ exiſtunt*; the Plaintiff replies, that the Letters Patents were in Force from the Time of making, *& adhuc exiſtunt & hoc petit quod inquiretur per patriam,* the Defendant demurred, and the Defendant's Plea adjudged ill, for he ought to ſhew how the Letters Patents became void. *Ibid.* 303.

Hoc parat', &c.

I *Hoc paratus eſt verificare,* not Matter of Subſtance. *Ibid.* 340.

Breach aſſign'd generally good after a Verdict, but ill on a Demurrer.

K **An** Action upon the Caſe upon an Agreement, *&c.* and the Breach aſſigned, that the Defendant *non performavit agreamentum prædict'*, Iſſue upon this joined, and a Judgment in *C. B.* for the Plaintiff, and a Writ of Error brought, and the Breach ſaid to be too general, but the Judgment affirmed; if this had been upon a *Demurrer*, it would have been good, but after a Verdict 'tis unqueſtionably good. *Ibid.* 344.

Performance.

A **It** is not ſufficient to plead Matter which would be a *Performance* of a Condition by Implication. *Skin.* 345.

Immaterial and inſufficient Traverſe.

B **Though** an immaterial Traverſe is aided upon a General Demurrer, yet an inſufficient Traverſe is not. *Ibid.* 346.

Replication of a private Act of Parliament, ill.

C **In** an Action of *Treſpaſs* and *Falſe Impriſonment*, the Defendant juſtified under a *Ca. Sa.* out of the Court of *Briſtol*; the Plaintiff *replies* and pleads a private Act of Parliament for erecting a Court of Conſcience in *Briſtol*, and ſhews that the Defendant had recovered but five Shillings Damage, and fifty Shillings Coſts; and ſhews that he arreſted the Plaintiff contrary to the Act, to which the Defendant rejoined; upon which the Plaintiff *demurred*, and adjudged againſt the Plaintiff, for he ought to have pleaded this Matter in the Court of *Briſtol*, and ſhewn that he was an Inhabitant if he wou'd have the Benefit of the Act; and if after they had proceeded there, he might have had an Action. *Ibid.* 350, 366, 407.

When a Plea amounts to the General Iſſue.

D **When** a Plea goes by way of Confeſſion and Avoidance, ſuch Plea ſhall amount to the General Iſſue. *Ibid.* 362.

Variance between the Plaint in an Inferior Court, and the Declaration.

E **The** Plaintiff in *Cur. Pal.* counted againſt the Defendant, that he was indebted to the Plaintiff as Adminiſtrator to *F. B.* in 10*l.* *pro tantis Deccarium ſummis ejuſdem Quer.* as Adminiſtrator of *F. B. per ipſum Def. ad uſum ipſius Quer.* as Adminiſtrator of *F. B. habit' & recept'* upon *non Aſſumpſit* pleaded, a Verdict and Judgment, there *pro Quer.* and a Writ of Error was brought in *B. R.* and Error aſſigned that the Plaint was general, and no mention of *F. B.* in the Plaint, ſo there is a Variance between the Plaint and the Declaration; and for this Error the Judgment was reverſed. *Ibid.* 386.

Where *Que eſt eadem Tranſgreſſio* not neceſſary in a Juſtification in Treſpaſs.

F **On** *ſon Aſſault* pleaded to a Treſpaſs of Aſſault and Battery, the Plaintiff *replies*, that the Defendant came into his Houſe and continued there after the Plaintiff deſired him to depart; upon which he commanded his Wife to put him out of the Houſe *quæ mollitur manus ſuper*, the Defendant *impoſuit & hoc, &c.* but does not ſay *quæ eſt eadem Tranſgreſſio*, and adjudged a good Replication, for it being *eadem tempore quo*, it is good without ſuch Concluſion; but if they vary in the Time, then it is neceſſary to ſay *quæ eſt eadem tranſgreſſio*. *Ibid.* 387.

Molliter manus, &c.

G **If** a Battery be outrageous, ſo that *molliter manus impoſuit* be not true, it ought to be ſpecially ſhewn; otherwiſe it ſhall be a good Juſtification. *Ibid.*

Accord to abate 14*s.* in Satisfaction of a Treſpaſs.

A **In** Treſpaſs, the Defendant pleads that the Treſpaſs was done by him and *J. R.* and that it was accorded between the Plaintiff and the ſaid *J. R.* that the ſaid *J. R.* ſhould abate 14*s.* due to her from *E.* the Plaintiff's Father, in Satisfaction, and avers that ſhe had abated it; to which the Plaintiff demurs, and the Plea adjudged ill, for the Defendant ought to ſhew how the 14*s.* was abated. *Skin.* 391.

Pleadings in an Action againſt a Parſon for not keeping a Bull.

B **In** an Action againſt the Parſon upon the Cuſtom of the Pariſh for not keeping a Bull and a Boar, and ſhews *quod opus fuit* of a Bull at ſuch a Day, and that the Parſon did not find one, *&c. ad dampnum ipſius Quer.* the Defendant demurred, and adjudged to be ill, for the Plaintiff ought to ſhew a Special Damage. *Ibid.* 399.

Where a Traverſe in an Avowry was held ill.

C **In** an *Avowry* to a *Replevin*, the Defendant ſhew'd that *A. B.* was ſeized in Fee, and made a long Leaſe, rendring Rent, and conveyed the Reverſion to the Plaintiff, and for Rent in *Arrear*, he diſtrained; the Plaintiff replies, that *A. B.* was ſeized of one Moiety, and *C. D.* of the other, before this Leaſe; that *C. D.* died ſeized, and his Moiety deſcended to his Son, and that the Plaintiff had conveyed the other Moiety to *J. D.* by Leaſe and Releaſe, and traverſes *abſque hoc*, that the Plaintiff was ſeized in Fee *ad aliquod tempus*; after the ſaid Conveyance the Avowant *demurred*, and the *Traverſe* adjudged ill, for he ought to have traverſed *abſque hoc*, that *A. B.* was ſeized in Fee *tempore dimiſſionis.* *Ibid.* 402.

A Plea of Miſnomer to an Indictment.

D **A Peer** indicted as a Commoner, pleads the *Letters Patent granted* to his Anceſtor, *gerent dat', &c. & hic in curia prolat'*, and ſets forth his Title by Diſcent, and concludes *& hoc paratus eſt verificare*; this Plea of *Miſnomer* is good in Abatement of the Indictment, and the Concluſion is good. *Ibid.* 517.

Letters of Adminiſtration.

E **An** Action of Trover brought by an Adminiſtrator, who in Pleading does not ſet forth Adminiſtration rightly granted to him, this Defect is helped by the Verdict. *Ibid.* 551.

Plene Adminiſtravit ill without pleading no Aſſets.

F **An** Adminiſtrator of an Executor pleads *plene Adminiſtravit*, the Day of the Writ purchaſed to a *Scire facias* brought againſt him upon a Judgment againſt the Executor; a *Demurrer* to the Plea held good, for he ſhould have pleaded *Riens outer manus.* *Ibid.* 565.

Pleading a Sentence.

G **Difference** between pleading a Sentence grounded on an original Juriſdiction, and given by Virtue of a particular Authority. *Ibid.* 496, 498.

A **Debt** for Rent upon a Demiſe for Years, the Defendant pleads *Nil habuit in Tenementis*; the Plaintiff replies, That he had a good and ſufficient Eſtate to make the Demiſe to the Defendant, *Modo & forma*, *ſcil.* That he was ſeiſed in his Demeſne as of Fee; upon which Iſſue is joined upon the good and ſufficient Eſtate, and any Eſtate out of which the Eſtate demiſed may be derived, is ſufficient for this Purpoſe; and all added after the *Scil.* is but Form. *Skin.* 624.

Replication to *Nil habuit in Tenementis.*

B **An** *Action* of *Trover* for a Ship and Cargo; and it was objected, That the Cargo was ſhipped by *A. B.* and Company, and *B.* being dead, the Action brought by *A.* only is ill, becauſe it appears others have an Intereſt: But ruled, That this ought to be proved; and *if* there are others, this is a Matter in *Abatement*, and ought to be *pleaded*. *Ibid.* 640.

What is Mattter of Abatement only, and ought to have been pleaded.

C **Where** the *Judgment* to a *Traverſe* is ill, the King may *traverſe* the *Inducement*, and ſo may a Subject; otherwiſe he may not *traverſe* the *Inducement* to a *Traverſe* more than a Subject; except it be upon an Office found where the Subject induces his Traverſe of the King's Title found by the Office, with a Title on his Part. *Ibid.* 657.

Where the King or Subject may traverſe the Inducement to a Traverſe.

D **In** *Treſpaſs* for taking his Beaſts: The Defendant *juſtifies* under a *Replevin* in the Hundred Court of the Biſhop of *S.* and ſhews that the Biſhop, *&c.* have, upon Complaint to the Steward, uſed to grant Replevins in the Court, or out of it, to replevin Cattle, and that one had taken the Beaſts of *J. S.* and that he levied a Plaint in the ſaid Court before the Steward, and the Steward commanded him to replevin the Beaſts, *&c.* The Plaintiff demurs, and adjudged *Pro quer.* for the Defendant having ſhewn the Property in a Stranger, the Plea amounts to the General Iſſue.

Where a Plea in Replevin amounted only to the General Iſſue.

E *Duplicity* or *Uncertainty* in Pleading is not to be allowed. *Comb.* 239, 40.

Duplicity or Uncertainty.

F **But** ſuch *Duplicity* ought to be ſhewn for Cauſe of *Demurrer* at Common Law. *Ibid.* 64, *&c.*

Demurrer.

G **To** ſay that the Party came to the Eſtate *per diverſas medias Aſſignationes*, is good, where it is but Inducement. *Ibid.* 64, 65.

How the Party is intereſted.

H **And** a Bankruptcy may be pleaded *ad omnes intentiones ſeparal' ſtatutorum.* *Ibid* 108.

Bankruptcy.

I **An** ill Inducement to a Traverſe may vitiate a Plea. *Ibid.* 245, 321.

Inducement.

K **Where** there are divers Matters alledged in one Record, 'tis ſufficient to plead to any one of them with (*inter al.*) *Ibid.* 253.

Inter alia.

L **But** where 40 Acres are recovered, one can't plead a Recovery of 20 Acres, but of 40 Acres, whereof the 20 Acres are Parcel. *Ibid.*

A Common Recovery.

Plea by Adminiſtration.

A Where an Adminiſtrator pleads ſeveral Judgments in Bar, the Plaintiff may reply as to every one of them ſeverally, and conclude to the Country. *Comb.* 443.

Traverſe.

B What is traverſable in Treſpaſs, Replevin or Avowry. *Ibid.* 471.

The like.

C A Traverſe ought to be of ſuch a Part or Point, which if found for the Defendant, deſtroys the Plaintiff's Action. *Ibid.* 321.

Pleading Conveyances.

D A Plea ought to be according to ſuch Conſtruction as the Law makes on a Conveyance. *Ibid.* 403.

E As a Recovery to Uſes of *A. B. &c.* is to be ſo pleaded. *Ibid.*

Contra pacem.

F In Treſpaſs *contra pacem* is Matter of Subſtance. *Ibid.* 168.

G In Debt for an Eſcape where one does not conclude *prout patet per Record'*, 'tis only Form, and the Plea is good. *Ibid.* 299.

When to conclude in Bar.

H Where the Condition of an Obligation is for Payment of three ſeveral Sums at three ſeveral Days, and the Defendant pleads Payment of the two firſt Sums, and that the third Day is not yet come, he ſhall conclude in Bar. *Ibid.* 483.

Concluſion of Pleas.

I Where a Matter of Fact is pleaded in Abatement, and the Plaintiff replies, and traverſes the Matter of Fact, he may conclude either Judgment *Si actio*, or *Quod reſpondeat ouſter*. *Ibid.* 479.

Aid by a Verdict.

K Where an ill Plea in Bar ſhall be aided by Verdict. *Ibid.* 378, 9.

Avowry.

L Of Pleas in Bar or Abatement to an Avowry. *Ibid.* 375.

Covenants.

M In Covenant to render a true and juſt Account: A Breach was aſſigned, *quod non dedit verum & juſtum computum*, and good. *Ibid.* 42.

Recovery in a former Action.

N One may plead *puis darein continuance*, that the Plaintiff had brought a ſecond Action, and recovered, tho' the ſecond Action was abatable. *Ibid.* 357.

Several dilatory Pleas.

O One cannot plead ſeveral dilatory Pleas at the ſame Time. *Ibid.* 68.

Outlawry.

P How an Outlawry is to be pleaded. *Id.* 379, 371.

Imparlance.

Q No Plea to the Juriſdiction after any Kind of Imparlance. *Ibid.* 253.

Defence.

R But one may plead to the Juriſdiction, without making any Defence. *Ibid.* 319.

Abatement.

S Of the Time to plead in Abatement. *Ibid.* 251.

Habeas Corpus.

T Time to plead on a *Habeas Corp.* or Attachment. *Ibid.* 3.

Reſpondeas ouſter.

U Four Days Time are allowed to plead on a *Reſpondeas ouſter*. *Ibid.* 19.

X *Always ready to pay*, not pleadable after Imparlance. *Ibid.* 334 441, 443.

Pleas Puis Darrein Continuance.

See {**Abatement.**
{**Releaſes.**

A **A Plea** Puis Darrein Continuance, **is always where the Defendant hath pleaded a Plea, and before a Trial there happens ſome new Matter which will avoid the Action; as a Releaſe,** &c. **there the Defendant may plead this new Matter** poſt ultimam Continuationem.

What it is.

B **Pleas** *Puis Darrein Continuance* are pleaded ſometimes in Abatement, and ſometimes in Bar: A Man ſhall have but one Plea *Puis Darrein Continuance*. 4 *H.* 7. *fol.* 8. 38 *H.* 6. 33. Becauſe the Plaintiff ſhall not be delayed *ad Infinitum*. 16 *H.* 7. 11.

How theſe Pleas are pleaded.

There ſhall be but one of them, and why.

C **In** a Plea *Puis Darrein Continuance* the Defendant muſt not conclude his Plea, Judgment *Si al' enqueſt*, but muſt conclude Judgment, *Si actio*. *Cro. Eliz.* 49. *pl.* 4.

How to conclude the Plea.

D **An** Attachment in *London* may be pleaded *Puis Darrein Continuance*, for it goeth in Bar. *Cro. Eliz.* 101. *pl.* 7. But *Quære*, See *Cro. Eliz.* 157.

Foreign Attachment pleaded.

E **The** Defendant ſhall not have ſuch Plea, unleſs the Matter thereof happened ſince the firſt Plea pleaded; otherwiſe it is not after the laſt Continuance. 9 *H.* 7. 8.

When he ſhall have this Plea.

F **It** may be pleaded after Iſſue joined, and at any Time before the Verdict, but not between the *Niſi Prius*, and Day in Bank. 16 *Ed.* 4. *fol.* 5. *Bro.* Title **Jour** 31. Title **Continuance**, 13, 27, 42, 76. *Vide Poſtea*. It may be pleaded after a Demurrer. *Hob.* 81.

When to be pleaded.

In Ejectment the Defendant pleads at the *Niſi Prius*, *Puis Darrein Continuance*, Entry into a Cloſe, Parcel, *&c.*

Doth not ſay in which Vill the Cloſe lay, is naught.

A **In** an Ejectment for Lands in *B.* and two other Vills, the Defendant at the *Niſi Prius* pleads *Puis Darrein Continuance*, Entry into a Cloſe, Parcel *præmiſſorum*, and expelled him, and ſays not in which of the Vills the Cloſe lay: And it was certified to the Court upon the *Poſtea*, and thereupon demurr'd and adjudg'd an ill Plea. *Cro. Jac.* 261. *pl.* 24, 262.

A Releaſe cannot be pleaded after Verdict at *Niſi Prius*, and before Day in Bank. But muſt have his *Audita Querela.*

B **After** Verdict at *Niſi Prius*, and before Day in Bank, the Defendant obtained a Releaſe, and at the Day in Bank ſhews it to the Court. *Curia.* He hath no Day to plead it, nor any Remedy but *Audita querela*. *Cro. Jac.* 646. *pl.* 10.

Outlawry *Puis Darrein Continuance*, is good.

C **The** Plea of Outlawry after Imparlance is good, without ſaying *Puis Darrein Continuance*. 5 *Mod.* 12.

Muſt be certainly pleaded.

They ought always to be certainly pleaded. *Plow. Com.* 33. *b. Co. Lit.* 303.

Payment of Part pleaded in Abatement after Iſſue joined, and naught.

D **The** Defendant after Iſſue joined, pleaded at *Niſi Prius* Payment of Part in Abatement *Poſt ultimam Continuationem*; and the Jury being diſcharged, and the Plea adjourned in Bank, the Plaintiff had Judgment to recover his Debt; becauſe he had pleaded no Place of Payment: And alſo, becauſe after Iſſue join'd, no *Reſpondeas Ouſter* can be awarded. *Aleyn*'s *Rep.* 66. 5 *Ed.* 4. 149

A Releaſe after the Eſſoin-Day, cannot be *Poſt ultimam Continuationem.*

E **Upon** Not guilty in Treſpaſs, the Defendant comes *Primo die Termini*, and prays, That the Enqueſt may not be taken, for that the Plaintiff had releaſed *Poſt ultimam Continuationem*: But becauſe the Releaſe was after the Eſſoin-Day, and came not between the laſt Continuance and the *Utas*, the Plea was diſallowed, and the Enqueſt was taken; but if the Releaſe had been before the Eſſoin-Day, it had been good. Alſo the Book ſays, That the Form of the Pleading was not good; for he ought to have ſaid *Actio non*, and not that the Enqueſt ought not to be taken. *Dyer* 361. *a. Cro. Eliz.* 49.

How to plead it.

How to plead a Releaſe after the Writ, and before Iſſue.

F **How** to plead a Releaſe *Puis Darrein Continuance*, See *Lutw.* 1142, 1143. and how to plead a Releaſe made after the Writ, and before Iſſue joined. *Lutw.* 1177, 1178.

How to plead the Death of one of the Plaintiffs.

G **Treſpaſs** againſt Four, and Three of them plead in Abatement the Death of one *Puis Darrein Continuance*; they muſt conclude, *Pet. judicium ſi Curia ulterius procedere vult*, and not *quod breve caſſetur.* 3 *Lev.* 130.

Where Death was pleaded after the laſt Continuance.

H **In** Debt upon a Bond, the Statute of **Uſury** was pleaded, and a Demurrer was to the Plea, and the Paper-Book made up and delivered, and the Demurrer joined with a Blank left for the Day of the *Curia adviſare vult.* The Defendant pleaded, That the Plaintiff died

after

after the laſt Continuance, and thereupon the Plaintiff's Attorney filled up the Blank, and made it *Diem Sabbati prox. poſt Quindena Paſchæ*, to which Day the Judgment ought to refer; and if the Plaintiff was then living, it would be good: And the Attorney for the Plaintiff was examined upon Oath, Whether he was then living or no? Who ſwore That he ſaw him after the ſaid *Saturday:* Whereupon the Plea was rejected. *Moor* again *Row*. 8 *W. B. R.*

Pledge or Pawn.

A **A Pledge or Pawn is a Security for Money lent, and to be delivered upon Payment of the Money. See** Cro. Jac. 245.

Pledge or Pawn, what.

B **Where** Goods are pawned, and no Time appointed for the Redemption, it may be made after the Death of him to whom they were pawned; but not after the Death of him who pawned them. *Cro. Jac.* 244. *pl.* 2.

When pawn'd Goods may be redeemed, and when not.

C **The** Pledging doth not make an abſolute Property, but is as a Security for his Money lent; and to deliver back upon the Payment of the Money. *Ibid.*

Pledging makes not an abſolute Property; but is as a Security for Money lent.

D **There** is a Difference between a Mortgage of Lands, and Pledging of Goods: For the Mortgagee hath an abſolute Intereſt in the Lands, but the other hath but a ſpecial Property in the Goods to detain them for his Security. *Ibid.* and *Co. Lit.* 208. *a.*

A Morgagee hath an Intereſt in the Lands: But the Party to whom Goods are pawned, hath only a ſpecial Property in them, *viz. Quonſque.*

E **When** the Money is tendered to the Executor, and he refuſes it, it is as good as Payment, and the ſpecial Property of the Goods is reveſted in the Plaintiff: For which, upon a Demand, and refuſing to deliver, Trover lies. *Ibid.* and *Hob.* 187.

When the Money is tendered and refuſed, it is as good as Payment; and upon refuſing to deliver them, Trover lies.

Pledges.

See { **Bail.**
Proceſs.
Replevin. }

Pledges, what.

Pledges are Bail to Actions; alſo upon ſuing out of ſome Original Writs, there it is thus inſerted, viz. Si **A. B.** fecerit te ſecurum de Clamore ſuo proſequendo, tunc pone per vadios & ſalvos Plegios **C. D.** nuper de **E.** Gen' quod ſit, &c. **Or theſe Pledges are generally,** John Doe **and** Richard Roe. A

Difference between Pledges and Mainpernors.

Pledges are thoſe that bail or redeem any Thing but the Body of a Man, and Mainpernors are thoſe that free the Body of a Man; alſo Pledges are uſually found for the Demandants in Real Actions, and Plaintiffs in Perſonal Actions. See *Cowel*'s *Interp. Mainpriſe.* B

When the Plaintiff's Pledges may be entered.

The Plaintiff's Pledges that he ſhall proſecute his Suit, may be entered at any Time pending the Suit. *Trin.* 22 *Car. B. R.* For the putting in of Pledges is now but a meer formal Thing; yet if the Pledges be not entered at all, it is Error, becauſe the Law directs the Plaintiff to find Pledges. C

The Reaſon of finding Pledges.

The Reaſon of finding Pledges was, That the Plaintiff ſhould proſecute his Suit with Effect to Judgment, and not put the Defendant to unneceſſary Trouble and Charge; for if he were nonſuited at the Trial, the Entry of the Judgment upon it is thus, *Ideo conſiderat. eſt quod præd. quer. & pleg. ſui de proſequend. ſint inde in miſericordia quer. Nomina pleg. &c.* But Pledges are now become a mere Thing of Courſe. D

Want of Pledges, is Subſtance.

5 & 5 **Annæ.**

Want of Pledges is Subſtance. 2 *Lev.* 39. But they are now aided by the Statute of 4 & 5 *Annæ*, unleſs ſet forth particularly for Cauſe upon a Demurrer. E

The

A **The** Sheriff, after Error brought, was permitted to amend his Return of his Writ, by indorſing of Pledges *De proſequendo*: But it was ordered by the Court, That the Plaintiff in the Action ſhould pay the Coſts of bringing the Writ of Error, if the Plaintiff in the Errors would not proceed any farther thereupon: But if he did proceed any farther, then the Plaintiff in the Action ſhould not pay him any Coſts. 3 *Lev.* 361.

Where Pledges were ordered to be indorſed, after Error brought.

B **Aſſigned** for Error that Pledges were not returned upon the Plaint in Replevin, removed out of an Hundred-Court into the Common-Pleas: It was not determined; but the Court inclined, that it was not Error. *Cro. Car.* 594. *pl.* 10.

Whether Pledges not being returned upon a Plaint removed by *Recordare* be Error or no.

Plene Adminiſtravit.

See {**Adminiſtrators.** / **Debet & Detinet.** / **Executors.**} {**Judgment.** / **Pleading.**}

C PLene Adminiſtravit **is a Plea pleaded by an Executor or Adminiſtrator, where they have adminiſtred the Deceaſed's Eſtate faithfully and juſtly before the Action brought.**

Plene Adminiſtravit, what.

D **Upon** *Plene Adminiſtravit* pleaded by an Executor, if it be proved that he hath Goods in his Hands which were the Teſtators, he may give in Evidence that he hath paid to that Value of his own Money, and need not plead it ſpecially: For whereever an Executor before the Action hath paid the Money in equal Degree with that demanded by the Plaintiff, he may plead Fully adminiſtred generally, and give the Special Matter in Evidence.

Executor pleads *Plene Adminiſtravit* though he had Goods of his Teſtator's in his Hands, he may give in Evidence that he paid of his own Money to the Value.

E **Where** the Teſtator or Inteſtate was indebted to the Executor or Adminiſtrator upon Bond, he may plead *Plene Adminiſtravit*, and give his own Bond in Evidence againſt any other Bond; ſo likewiſe upon an *Indebitatus*; for he ſhall have the Privilege of paying himſelf firſt.

Executor or Adminiſtrator may pay himſelf firſt, and on *Plene Adminiſtravit*, give his own Bond in Evidence.

How *Plene Adminſtravit* is to be pleaded; where it is naught upon a Demurrer, and how to be helped by a Verdict.

A *Plene Adminiſtravit* pleaded, is naught, (upon a Demurrer, and not helped by Verdict, unleſs it be found that he had Aſſets the Day of the Plea pleaded. *Cro. Jac.* 132.) omitting of the Words, *Et quod ipſe non habet aliqua bona ſeu catalla teſtatoris nec habuit die exhibitionis Billæ prædictæ ſeu unquam poſtea:* Becauſe the *Plene Adminiſtravit* without this Cauſe refers to the Time of the Bill filed: And he might have paid Debts without Suit after the Bill filed, and before the Plea, which he might give in Evidence upon the Trial if Iſſue were joined upon *Plene Adminiſtravit.* 3 *Lev.* 28, 29. *Cro. Jac.* 132.

Where it is no Plea.

B *Plene Adminiſtravit* is no Plea where an Executor or Adminiſtrator is ſued in the *Debet* and *Detinet*, becauſe he is charged for his own Occupation. 1 *Mod.* 185.

Upon *Plene Adminiſtravit*, the Plaintiff may pray Judgment preſently of the Aſſets *quando acciderint.*

C **Upon** *Plene Adminiſtravit* pleaded, the Plaintiff may pray Judgment preſently of the Aſſets *quando acciderint.* 1 *Lev.* 286.

How to plead *Plene Adminiſtravit* upon a *Sci. fa.* againſt Executor.

What Adminiſtration can be given in Evidence.

What the Judgment upon the *Sci. fa.* is.

D **To** a *Sci. fa.* againſt an Executor, he pleads *Plene Adminiſtravit:* The Plaintiff demurs ſpecially; the Court thought the Plea to be naught upon a Special Demurrer, but upon a general Demurrer it had been good. And they held, That no Adminiſtration could be given in Evidence, but Payment of Judgments: And a ſpecial *Plene Adminiſtravit* would ſhew it to be upon Judgments, and that he had not Aſſets *ultra.* 6 *W. & M. Vide Ordway* and *Godfrey.* 3 *Cro.* 575. But I ſuppoſe, the Judgment upon the *Sci. fa.* is only *De bonis Teſtatoris*; and after that there muſt be a *Fieri facias de bonis Teſtatoris*; and a *Nulla bona Teſtatoris* returned; and a *Sciri fieri Inquiri:* And after that an Inquiſition returned, and Aſſets found upon it, and another *Scire facias* (if the Party was not ſummoned upon the *Sciri fieri Inquiri*) muſt be ſued, to which the Defendant may appear and traverſe the *Devaſtavit.*

Upon *Plene Adminiſtravit*, Retainer by giving of his own Bond, good Evidence.

E **An** Obligor makes an Executor and dies; the Executor enters into Bond to the Obligee for the Payment of this Money, and takes in the Bond which is cancelled; another Creditor ſues him, who pleads *Plene Adminiſtravit*, and gives this Matter in Evidence. And *per Cur.* If the Debt was ſufficiently diſcharged without Fraud, the Executor may retain for ſo much, and the Goods retained ſhall not be ſaid to be Aſſets. 1 *Leon.* 112.

Plene Adminiſtravit ante Notitiam.

F **Debt** againſt an Adminiſtrator in another County than where the Adminiſtrator dwelt, was brought by Original, and before Notice he paid other Debts of the Inteſtate due by Specialties: *Et ſic* he had not Aſſets at the *Teſte* of the Original; and held a good Plea. 2 *Leon.* 88.

A *Plene Adminiſtravit* is no good Plea upon a *Sci. fa.* to a Judgment, but he ought to ſhew ſpecially how he hath adminiſtred them. Upon a ſpecial Demurrer this may be held inſufficient; but, ſays the Court, the beſt Way is to ſay, That no Goods came to his Hands, except ſuch, *&c.* and to ſhew how he adminiſtred them. *Aleyn* 48. See Title **Sci. fa.**

How to plead fully adminiſtred to a *Sci. fa.*

Plurality.

B **Plurality is where a Parſon who hath a Benefice with Cure, takes another Benefice with Cure, having no Qualification or Diſpenſation.**

Plurality, what.

C **For** Pluralities, See *Holland*'s Caſe. 4 *Rep.* 75, to 79. *Acton*'s Caſe, 4 *Rep.* 117. *Digby*'s Caſe, 4 *Rep.* 78. *b.*

For Pluralities.

D **If** a Man hath a Benefice with Cure (whatever the Value is) and is admitted and inſtituted into another Benefice with Cure, having no Qualification or Diſpenſation; the firſt Benefice is void, and the Patron may preſent. *Vaugh.* 131.

The firſt Benefice becomes void, by taking of a ſecond without a Diſpenſation.

E **Where** a Parſon hath a Benefice with Cure of Souls, and takes another of 8 *l. per Ann.* by taking of this ſecond Benefice, the firſt is made abſolutely void after Admiſſion, Inſtitution and Induction, and the Patron at his Peril ought to preſent within the ſix Months, otherwiſe a Lapſe will incur. *Cro. Car.* 375. 21 *H.* 8. *cap.* 13. *Note*, This Parliament began at *London*, and was adjourned to *Weſtminſter*.

By taking of a ſecond Benefice the firſt is abſolutely void, and the Patron muſt preſent in ſix Months, or a Lapſe will incur. 21 H. 8. cap. 13.

F **But** Note, they may purchaſe a Licence or Diſpenſation, and may take and keep two or more Benefices with Cure, according to the Directions and Qualifications in the ſaid Statute of 21 *H.* 8. *cap.* 13. which ſee there.

Where they may take two or more Benefices.

G **What** ſhall be a Plurality within the Statute of 21 *H.* 8. *cap.* 13. and what within the Canon of the *Lateran* Council. *Lut.* 1306.

What is within the 21 H. 8. cap. 13. and what within the *Lateran* Council.

Poor.

See Parish.

Where the Grandfather, and not the Pariſh, ſhall keep the Children.

A IF the Father of Children do leave the Pariſh where he dwelleth, and there is a Grandfather of the Children to be found; this Grandfather, if he is able, is chargeable with the keeping of the Children, and not the Pariſh. *Mich.* 24 *Car. B. R.* For the Tie of Nature is a nearer Tie than the Law can or doth enjoin.

B **For** all Matters relating to the Poor, ſee *Nolſon's Juſtice*, from *fol.* 371. to 381.

Money deviſed to a Pariſh, ſhall be to the Poor of the Pariſh.

Money was given by a Will to a Pariſh, generally, without ſaying to what Uſe: Decreed to the Poor of the Pariſh. *Chanc. Rep.* 134, 135.

Where there is a new and old Pariſh, how the Poor ſhall be paid.

C **Where** there is a new Pariſh and Church derived out of the old Pariſh, how the Poor ſhall be paid. See *Cro. Car.* 92. *pl.* 17, and 93. and Title **Pariſh.**

Where a Grandmother ſhall keep a poor Child.

D **Where** a poor Child, who hath a Grandmother who is married, and hath perſonal Eſtate, is left to the Pariſh, the Huſband of the Grandmother ſhall keep it. 1 *Keb.* 383. in *Scot* and *Manly*'s Caſe.

Ports.

See Cinque-Ports.

The Cinque-Ports are not excluſive of the Common Law.

E THE Cinque-Ports are not abſolutely excluſive of the Common Law, ſo that it may not intermeddle in ſome Caſes with the Proceedings in their Court: *Mich.* 22 *Car. B. R.* For the Common

Law is the univerſal and ſupream Law of the Nation, and no Place ought to be ſo privileged, either by Cuſtom or Charter, as totally to be exempted from its Juriſdiction; for this might cauſe a Failure of Juſtice in ſome Caſes, if it ſhould be ſo, which this Court will not ſuffer if there be Complaint made thereof.

A **A Writ** of Error to reverſe a Judgment given in the Cinque-Ports, is to be brought before the Warden and Conſtable of *Dover*: *Mich.* 22 *Car. B. R.* For theirs is the Supream Court, and the other Inferior Courts are ſubordinate.

Where a Writ of Error to reverſe a Judgment in the Cinque-Ports muſt be brought.

B **Whether** a *Certiorari* lies to any of the Cinque-Ports, hath been a Queſtion: *Paſch.* 23 *Car. B. R.* Yet a *Certiorari* was granted out of this Court to remove a Judgment given at *Dymchurch* in *Kent*, being a Limb of one of the Cinque-Ports, in *Rook* and *Knight*'s Caſe. *Mich.* 22 *Car. B. R. Rot.* 381. Moved by *Lancelot Johnſon* of the *Inner-Temple*. This was granted upon a Suggeſtion of Failure of Juſtice there.

Whether a *Certiorari* lies to the Cinque-Ports.

Poſſeſſion.

See Entry.

C **Poſſeſſion is either actual Poſſeſſion, or Poſſeſſion in Law: Actual Poſſeſſion is where a Man actually entereth into any Lands to him deſcended: Poſſeſſion in Law is where Lands are deſcended to a Man, and he hath not actually entered thereinto.**

Poſſeſſion in { Fact. Law.

D **If** one do make an Entry into the Lands of another, and that other doth, notwithſtanding the Entry, keep the Poſſeſſion of the Lands entred into with his Servants and Cattle, the Entry is no Entry in Law, becauſe the Party in Poſſeſſion was not ouſted by ſuch Entry; but if the Servants and Cattle be put out to gain the Poſſeſſion, he that is thus put out of Poſſeſſion, if he will prove a Poſſeſſion in himſelf after this, he muſt prove an actual Re-

If a Man keep Poſſeſſion of Lands entered into, it is no Entry in Law.

entry afterwards (*Paſch.* 1650. *B. S.* 25 *Apr.*) to regain the Poſſeſſion.

Where Priority of Poſſeſſion gives a Title.

A **Againſt** what Perſons Priority of Poſſeſſion gives a good Title to Lands. 2 *Saund.* 112.

To prove a Man's Cattle on the Land, is no Proof of his Poſſeſſion.

B **The** proving of one's Cattle to be upon the Land in Queſtion, is not a ſufficient Proof, that he whoſe Cattle they were, was in Poſſeſſion of the Land at that Time when the Cattle were there. For the Cattle might be upon the Land Damage Feaſant, and the Land at the Time be in the Poſſeſſion of another. *Paſch.* 1652. *B. S.*

Pleading in Treſpaſs *Poſſeſſionatus* without ſaying how; and that he took the Cattle Damage Feaſant, is naught.

C **Pleading** in Treſpaſs *Poſſeſſionatus fuit* (without ſhewing how) and that he took the Cattle Damage Feaſant, is naught. *Lutw.* 1497.

Where Caſe lies for the Poſſeſſioner, and where for the Reverſioner.

D **Caſe** well lies for a Reverſioner, for ſpoiling of his Trees: And for the Poſſeſſioner, for the Loſs of his Shade, Shelter, Fruit, *&c.* 3 *Lev.* 209.

Poſſeſſion by Leaſe and Releaſe, how it is.

E **A Man** upon a Leaſe and Releaſe is in Poſſeſſion to all Intents and Purpoſes, except only for bringing of Treſpaſs, which cannot be without a *Pedis Poſitio.*

Continued Poſſeſſion, a good Evidence of a Title.

F **A continued** quiet Poſſeſſion, is a violent Preſumption of a good Title. *Co. Lit.* 6. *b.*

The Plaintiff out of Poſſeſſion, muſt make a good Title.

G **He** that is out of Poſſeſſion, if he brings his Action, muſt make a good Title. *Vaugh.* 8.

He that will recover Poſſeſſion, muſt ſhew a good Title.

H **Where** one Man would recover any Thing from another, it is not ſufficient to deſtroy the Title of him in Poſſeſſion; but you muſt prove your own to be better than his. *Ibid.* 58, 60.

Prior Poſſeſſion.

I **Prior** Poſſeſſion is a good Title againſt him who hath no Title. *Ibid.* 299.

Poſſibility.

See { **Baron and Feme.**
{ **Releaſe.**

A **A Poſſibility is an uncertain Thing, which may or may not ever happen.**

A Poſſibility, what.

B **A Poſſibility** only cannot be granted over. 4 *Rep.* 66. *b.*

Poſſibility cannot be granted over.

C **No** Poſſibility, Right, Title, or Choſe in Action, can be granted or aſſigned to a Stranger. 10 *Rep.* 48. *a. b.*

No Poſſibility can be aſſigned over to a Stranger.

D **There** cannot be a Tenant in Tail after Poſſibility of Iſſue extinct, while any of the Parties live. 43 *in Margine.*

No Tenant after Poſſibility, while any of the Parties are living.

E **A Deviſe** of the Poſſibility of a Term is void: As where a Term is deviſed to *A.* for Life, Remainder to *B. B.* deviſes this Remainder to *C.* and dies, then *A.* dies, this Deviſe to *C.* is void, and the Executors of *B.* ſhall have it. *March* 136, 137. See 3 *Lev.* 427.

A Deviſe of the Poſſibility of a Term, is void.

Poſtea.

See { Iſſues. Judgments.

Poſtea, what.

A THE Poſtea is the Return of the Judge, before whom the Cauſe was tried, of what was done in the Cauſe; as is indorſed on the Back of the Niſi Prius Record, by which the Cauſe was tried.

It begins, Poſtea die & loco, &c. which is the Reaſon why it is ſo called. The Poſtea is brought into Court at the Day in Bank and recorded there, and delivered back to the Attorney, who gives a Rule for Judgment upon it; and if there be no Rule to the contrary after the Rule for Judgment is out, the Attorney brings his Poſtea to the Secondary, who ſigns his Judgment thereupon, and then he enters all this Matter upon the Iſſue-Roll immediately after Iſſue.

After the *Poſtea* is brought in, Defendant has four Days to move in Arreſt of Judgment.

B The Defendant hath four Days by the Rules of the Court to ſpeak in Arreſt of Judgment after the *Poſtea* is brought into the Court; and if the Party for whom the Verdict paſſed, will not bring it in upon Notice given to him by the other Party, that he intends to move in Arreſt of Judgment; the Court upon a Motion ſetting forth this Matter, will order Judgment to be ſtaid, until four Days after it ſhall be brought in: *Vide* Title **Notice.** That the Defendant may have Time to conſider upon the Record what to move out of it in Arreſt of Judgment.

No Time is fixed for the Clerk of Aſſize to bring in the *Poſtea*.

C There is no general Rule of Court for the Clerk of the Aſſize to bring in the *Poſtea* into this Court by a preciſe Time; for ſometimes poſſibly he may be able to bring it in ſooner than at another Time; but if he be negligent, and return them not in convenient Time, the Parties grieved may move the Court, or at the Side-Bar, and thereupon the Court will make a Rule that he bring them in ſpeedily; *Mich.* 22 *Car. B. R.* To avoid farther Delay to the Party concerned.

Plaintiff muſt bring in the *Poſtea*, tho' Verdict be prejudicial to him.

D Although the Verdict given be prejudicial to the Plaintiff, as he conceives, yet he ought to bring in the *Poſtea*. 1651. *B. S.* 13 *Maii.* For he muſt abide by by the Trial, though it may prove prejudicial unto him, that if he will not enter the Verdict, the Defendant may.

A **A** *Poſtea* is a Record of this Court truſted with the Attorney in the Cauſe by the Clerk of the Aſſize, and the Attorney is bound, if he be ſo truſted, to deliver it into the Office, that the Judgment may be entred by it by the Officer of the Court: *Trin.* 1651. *B. S.* And if he do it not, the Court will inforce him to do it.

Attorney bound to deliver the *Poſtea* into the Office.

B **It** is not neceſſary to annex the *Diſtringas* unto the *Poſtea*, although it is uſual ſo to do: *Trin.* 1651. *B. S.* For they have no Relation one to the other.

Diſtringas need not be annexed to the *Poſtea*.

C **The** not filing of *Venire's* and *Diſtringas's* after Verdict, is helped by the Statute of *Jeofails*; but an erroneous *Venire* and *Diſtringas* is not aided.

Not filing of *Venire* and *Diſtringas* helped by the Statute of Jeofails.

D **The** Court may ſtay the bringing in of the *Poſtea*, and entering up of Judgment upon a Verdict, if they find Cauſe to do it; *viz.* for ſome undue Practice in the Proceedings to the Trial, although the Plaintiff's Cauſe was good: For it is not enough to have a good Cauſe, but it muſt be legally proſecuted. *Mich.* 22 *Car. B. R.*

The Court may ſtay entring of Judgment on a *Poſtea*.

E **If** the Clerk of the Aſſize hath miſtaken in the drawing up of the *Poſtea* (as ſometimes it falls out to be) he may amend it by his Notes which he took, and by which he drew it up, altho' it be returned: But it muſt be before it be filed; for then it is a Record of this Court, and may not be altered.

The Clerk of Aſſize may amend the Return of the *Poſtea* by his Notes.

F **A Return** of a *Poſtea* was amended upon the Memory of the Judge who tried the Cauſe. *Cro.* 338. *pl.* 15.

A *Poſtea* amended by the Memory of the Judge who tried the Cauſe.

G **After** the *Poſtea* is brought into Court, and the Record hath been read in Court, in order to the ſpeaking to ſome Matter in Law in it: The Attorney in the Cauſe ought not to have the *Poſtea* any longer in his Cuſtody, but it ought to remain in Court, and be filed of Record in the Court.

When the *Poſtea* muſt remain in Court.

H **Formerly** after a Nonſuit at the Aſſizes, for want of confeſſing of Leaſe, Entry and Ouſter, the Plaintiff's Attorney immediately made out a Writ of Poſſeſſion: But the Practice is ſince altered; ſo that now it cannot be done until after the *Poſtea* comes in at the Day in Bank: For it may be there was not due Notice of Trial given; or there may be ſome other good Reaſon ſufficient to ſet aſide the Nonſuit. *Note*, How to get Coſts in it; See Title **Coſts**.

How to get Poſſeſſion upon a Nonſuit, for not confeſſing Leaſe, Entry and Ouſter.

I **It** was returned upon the *Poſtea* that the Jurors appeared, *Qui electi triat' & jurat' dicunt ſuper ſacramentum ſuum quod, &c.* whereas it ſhould have been, *Qui ad veritatem de infra contentis dicend. electi triat. &c.* and for this Cauſe the Judgment was reverſed. *Cro. Jac.* 119. *p.* 8. *Cro. Jac.* 207. *pl.* 3.

Qui ad veritatem de infra content. being left out of the Return of the *Poſtea*, was held to be Error.

Poſthumous Children, ſee Remainder.

Power.

A Power, what.

A Power is an Authority which one Man gives to another to act for him; alſo it is ſometimes a Reſervation which a Man makes in a Conveyance for himſelf to do ſome Act, viz. As to make Leaſes, or the like. A

Rules to be obſerved of Powers.

All Powers ought to obſerve two Rules: 1. The Conſtruction of them ought to be interpreted according to the Intent of the Parties. 2. They muſt be ſtrictly purſued. 5 *Mod.* 379, 380. B

What Power is aſſignable.

A bare Power is not aſſignable over, but a Power coupled with an Intereſt is. 1 *Mod.* 318. C

A Servant who hath a Power to ſell cannot aſſign it over.

A Servant who hath only a Power from his Maſter to ſell, cannot aſſign it over. *Cro. Jac.* 470. D

A Power not purſued decreed.

A Power decreed though not ſtrictly purſued. *Chanc. Rep.* 263, 264, 265. E

Power to ſell Lands ſubject to the Rules of Equity.

Power to ſell Lands, ſubject to the Rules of Equity. *Chanc. Rep.* 281. F

How Powers muſt be executed.

A Power to leaſe Lands and Tithes, ſo that 5 *s. per* Acre be reſerved: They are both leaſed, reſerving 5 *s. per* Acre for the Land, and nothing for Tithes; and good. 2 *Lev.* 150. G

How to make Leaſes for Lives by Virtue of a Power.

If Tenant for Life hath Power to make Leaſes for Lives; a Leaſe for Life without Livery is good, and better than with Livery. 2 *Lev.* 149. H

A Power to revoke by Indenture, ſealed in the Preſence of three Witneſſes: He covenants to levy a Fine, which he did, and declared other Uſes; held a Revocation. 2 *Lev.* 149. I

How Attorneys may make Leaſes.

Where Attorneys have Power to make Leaſes for Years by Indenture, they muſt not make them in their own Names, but in the Name of him who gave the Authority. 9 *Rep.* 76. *b.* 77. *a.* It muſt be K

The Form of a Leaſe by Virtue of a Letter of Attorney.

done thus, *viz.* **This Indenture** made, *&c.* Between *A. B.* and *C. D.* of the one Part, and *E. F.* of the other Part: **Whereas** the ſaid *A. B.* by a Writing or Letter of Attorney, under his Hand and Seal duly executed, dated on or about the 20th Day of, *&c.* amongſt other Things therein contained, **Did** authorize the ſaid *C. D.* in the Name of him the ſaid *A. B.* and on his Behalf, to ſeal and execute Leaſes of ſuch Parts of his Lands, Tenements and Hereditaments, as ſhould be thought fit to be leaſed: **Witneſſeth,** That in Conſideration of 200*l.* to the ſaid *A. B.* in Hand paid by *E. F.* the Receipt, *&c.* **He** the ſaid *A. B.* by his Attorney, **hath** leaſed, *&c.* **Habend'**, &c. **Yielding and Paying** to the ſaid *A. B.* his Heirs and Aſſigns, *&c.* **And** the ſaid *E. F.* covenants with *A. B.* his Heirs and Aſſigns, to pay the Rent, *&c.* **And** the ſaid *A. B.* by his ſaid Attorney, for himſelf, his Heirs, Executors and Adminiſtrators, doth covenant, *&c.* to and with the ſaid *E. F.* *&c.* See 3 *Lev.* 138, 139, 140.

How a Power muſt be executed.

A **A Power** muſt be executed ſtrictly. 6 *Rep.* 33. *a.*

A Difference between a naked Power, and a Power flowing from an Intereſt.

B **When** a bare Power is given to a Feme ſole by Will to ſell Lands, although ſhe marries ſhe may ſell, nay may ſell to her Huſband; becauſe it was not created by her ſelf out of any Intereſt of her own: But where a Feme ſole upon the Settlement of her own Eſtate, reſerves ſuch a Power which flows from an Intereſt, that Power ought to be executed by the Feme ſole; and if by Baron and Feme, it is not good. *Chanc. Rep.* 18.

A Leaſe for more Years than the Leſſor had Power for, ſhall be good for ſo much as he had Power for.

C **A Man** hath Power to leaſe for ten Years, and he leaſes for twenty; the Leaſe in Equity ſhall be good for ten of the twenty Years. *Chanc. Rep.* 23.

A Clauſe that the Conuſees ſhall ſtand ſeized to the Uſe of the Leſſees.

D **Where** there is a Power to make Leaſes, it is uſual to have a Clauſe in the Deed, That the Conuſees and their Heirs ſhall ſtand ſeized to the Uſes of ſuch Leſſees. 8 *Rep.* 70. *a. b.*

Power to leaſe for Ninety-nine Years, or three Lives, how to be.

E **If** a Man hath a Power to make a Leaſe for three Lives, or twenty-one Years, he cannot make a Leaſe for ninety-nine Years, if three live ſo long.

Where for Ninety-nine Years, if three live ſo long.

F **But** if he hath a Power to make a Leaſe or Grant, *Proviſo*, That it doth not exceed three Lives, or twenty-one Years, he may make a Leaſe for ninety-nine Years if three live ſo long; for this doth not exceed the Number of three Lives. 4 *Rep.* 70. *a. b.*

A Power to make Leaſes at any Time for twenty-one Years, muſt be Leaſes in Poſſeſſion, not to commence after a Leaſe in Being.

G **A Power** to make Leaſes at any Time for twenty-one Years: Before the Leaſe in Being expired, ſhe made a Leaſe to *J. S.* for twenty-one Years, to commence at the Determination of the Leaſe in Being, and died; the firſt Leaſe expired: And held, That the ſecond Leaſe was void, for it ought to have been a Leaſe in Poſſeſſion, and not an Intereſt to begin *in futuro. Cro. Jac.* 318. *pl.* 2. 319. 6 *Rep.* 33. *a. Cro. Eliz.* 5. *pl.* 5.

A Power may be apportioned.

A **There** is a Difference between a Condition, and a Power: A Condition cannot be apportioned; but a Power may: For the one is not favoured in the Law as the other is. *Hard.* 414.

Where a Power in Groſs.

B **Where** a Power is in Groſs, and where annexed to an *Eſtate.*

Power to make Leaſes upon a Covenant to ſtand ſeiſed.

C **A Covenant** to ſtand ſeiſed, with Power to make Leaſes; he makes a Leaſe rendering Rent, and dies: He in the Remainder for Life brings Debt for this Rent, and it doth not lie: Becauſe the Power being general to make Leaſes, and not upon any particular Conſideration, no Uſe can ariſe out of the Covenant to ſtand ſeiſed, as if it were in the Caſe of a Feoffment or Fine; and therefore the Leaſe is void. 1 *Lev.* 30. See Title **Leaſes.**

Where a Power ſhall be well executed.

D **A Power** may be well executed, though there be no Recital of the Power in the Deed for the Execution thereof. 1 *Lev.* 150, 151.

Power to charge by Deed, was done by two Deeds, and good.

E **A Power** to charge the Land by Deed, and it was by two Deeds, *viz.* Leaſe and Releaſe, and well enough. *Ibid.*

Equity ſhall not make good a Power not well executed.

F **A Power** not well executed in Law, ſhall not be made good in Equity. 1 *Lev.* 241.

Where a Power coupled with an Intereſt may be deſtroyed, not a collateral Power.

G **A Feoffment,** Fine or Recovery, will deſtroy a Power coupled with an Intereſt to the Party himſelf, but not a collateral Power. 2 *Lev.* 60.

Where a Power may be deſtroyed.

H **Tenant** in Tail, with a Power to make a Jointure, ſuffers a Recovery: This deſtroys the Power. 2 *Lev.* 61.

When the Power to make Leaſes reſerved on a Term limited to Truſtees, is well executed.

I **A Grantor** limits a Term to Truſtees, upon ſuch Truſts as he ſhall direct, reſerving to himſelf a Power to make Leaſes with or without Fine, and rendring ſuch Rents and Services as he ſhall think fit, then by Deed declares the Truſts of the Term to be for the Payment of his Debts, and after this makes a Leaſe without rendring Rent, the Power well executed, and the Leaſe good. *Skin.* 428.

Practice.

See { **Appearance.** **Declaration.** **Demurrer.**

A If the Attorney for the Plaintiff do tell the Defendant's Attorney, that he is content to ſtay for a Plea till ſuch a Time, and yet doth in the mean Time enter Judgment for want of a Plea, this is not fair Practice: But if this be made to appear to a Judge at his Chamber, or to the Court; the Court will vacate the Judgment, and force him to accept of a Plea. *Hill.* 22 *Car.* 1. *B. R.* For the Law will not countenance Fraud and Falſehood in the Proceedings thereof, nor ſuffer Advantage to be taken thereby; but loves plain and fair Practice.

Where the Court will vacate a Judgment for unfair Practice in the Plaintiff's Attorney.

B It is not fair Practice for the Defendant's Attorney to demur to the Plaintiff's Declaration without probable Cauſe, but only to gain Time to plead. *Trin.* 22 *Car. B. R.* For this is apparent Cauſe of Delay, which they ought not to be inſtrumental in, againſt the known Rules of Practice.

To demur only to gain Time to plead, is not fair Practice.

Præmunire,

C **A Judgment in a** Præmunire **is, That the Party ſhall be put out of the King's Protection, and that he be impriſoned without Bail, until he hath made Fine at the King's Will, and his Lands and Goods ſhall be forfeited.** Stat. 27 Ed. 3. cap. 1.

Præmunire, what.

The King may *Non Proſequi* a *Præmunire*, which bars the Plaintiff's Suit.

A If the King's Attorney will not proceed in a *Præmunire*, for ſuing in the Spiritual Court, of ſuch Matters whereof they have no Juriſdiction, the Party grieved cannot maintain his Suit; for the principal Matter in the *Præmunire* is the putting of the Party out of the King's Protection, and the Damages are but acceſſory, and the Principal being releaſed, the Damages are gone. 1 *Leon.* Caſe 399. See 16 *R.* 2. *cap.* 5.

16 R. 2. cap. 5.

Of a *Præmunire*, and Pope's Encroachments.

B The famous Caſe of a *Præmunire*, where all the Statutes and Matters relating thereunto, are touch'd upon and explain'd; with an Hiſtory of the Pope's Encroachments. *Lalor*'s Caſe, *Davis*'s *Rep.* 83, 84, *&c.*

Precedents.

The Court will upon ſpecial Return compel the Curſitors to alter the antient Precedents of Writs.

C If there be a ſpecial Cauſe to alter the antient Precedent of a Writ, by Reaſon of any New Statute, or Change in Government, the Curſitors are not to keep the old Form, but are bound to alter it, as the Caſe requires; and if they ſhall refuſe to do it, this Court will compel them to it: *Trin.* 1650. *B.S.* Elſe it would be very miſchievous to the People, who by that Means may have their Writs abated, and be put to the Trouble and Charge of purchaſing of new Writs, by Reaſon of their Wilfulneſs or Ignorance.

What are not good Precedents.

D An extrajudicial Opinion given in or out of Court, is no good Precedent. *Vaugh.* 382.

What are good Precedents.

E Precedents without a judicial Deciſion upon Argument, are of no Moment. *Vaugh.* 429.

Precedents which paſs *Sub ſilentio*, not to be regarded.

F Precedents of Fact, which paſs *ſub ſilentio* in the King's Bench, or Common Pleas, are not to be regarded. *Vaugh.* 399.

What new Precedents are.

G New Precedents are not conſiderable. *Vaugh.* 169.

What long Uſage is.

H Long Uſage is a juſt Medium to expound an Act of Parliament. *Ibid.*

A **The** Judges and Sages of the Law have always given great Regard to Precedents. 4 *Rep.* 93, 94.

Judges and Sages of the Law always give great Regard to Precedents.

B **Says** *Vaughan*, Chief Juſtice, in the Caſe of *Porter* and *Fry*: 1 *Mod.* 307. I wonder to hear of citing of Precedents in Matters of Equity; for if there be Equity in a Caſe, that Equity is an univerſal Truth, and there can be no Precedent in it: So that in any Precedent that can be produc'd, if it be the ſame with the Caſe in Queſtion, the Reaſon and Equity is the ſame in itſelf: And if the Precedent is not the ſame Caſe with the Caſe in Queſtion, it is not to be cited, being not to that Purpoſe.

No Precedents to be cited in Matters of Equity, unleſs it be the ſame Caſe.

C *Bridgman*, Lord Keeper: Certainly Precedents are very neceſſary and uſeful to us; for in them we may find the Reaſons of the Equity to guide us: And beſides, the Authority of thoſe who made them, is much to be regarded: We ſhall ſuppoſe they did it upon great Conſideration of the Matter; and it would be very ſtrange and ill, if we ſhould diſturb and ſet aſide what has been the Courſe for a long Series of Time; therefore Precedents were ordered. *Ibid.*

That Precedents are neceſſary and uſeful.

The Reaſons why.

D *Hale*, Chief Baron. I know there is no intrinſical Difference in Caſes by Precedents: But there is a great Difference in a Caſe where a Man is to make a Precedent, and where a Man ſees (and is to follow) a Precedent: In the one Caſe, a Man is more ſtrictly bound up; but in the other, he may take a greater Liberty and Latitude: For if a Man doubt whether a Caſe be equitable or no, in Prudence he will determine as the Precedents have been, eſpecially if made by Men of good Authority and Learning, and have been continued and purſued.

The Difference between making a Precedent, and following a Precedent.

E **The** Court will not reverſe a Judgment contrary to many Precedents. *Cro. Eliz.* 65.

What Eſteem the Court hath for Precedents.

F **The** Precedents of the Courts are the Laws of the Courts; and one Court ought to take Notice of the Cuſtoms and Courſes of the other Courts.

The Precedents of the Courts are the Laws of the Courts; and one Court ought to take Notice of the Cuſtoms of other Courts.

Premiſſes.

See **Habendum.**

Premiſſes, what.

THE Office of the Premiſſes in a Deed, is to expreſs the Grantor, Grantee, and the Thing granted: The Office of the Habendum, is to limit the Eſtate; ſo that the general Implication of the Eſtate, which paſſeth by Conſtruction of Law by the Premiſſes, is always controlled and qualified by the Habendum. 5 Rep. 55. b. A

To Heirs in the Premiſſes, and for Life in the *Habendum*, is void.

Where Lands are given in the Premiſſes to a Man and his Heirs, *Habend.* for Life, the *Habend.* is repugnant and void. 2 *Rep.* 23. *b.* B

Fee in the Premiſſes, *Habendum* for Life, the *Habendum* is void, and Premiſſes ſtand good with Livery.

How it is *Habendum* for Years.

Where a Man gives Lands in Fee in the Premiſſes, *Habendum* for Life, the *Habendum* is void, for Livery is requiſite to both the Eſtates; and therefore when Livery is made, it ſhall be moſt beneficial to the Feoffee; but until Livery, the Grantee hath only an Eſtate at Will: But where it is to a Man and his Heirs, *Habendum* for Years, there it is good, and ſhall be an Eſtate for Years. 2 *Rep.* 23. *b.* 24. *a.* C

Preſcription.

See { Common.
Cuſtom.
Proof.
Que Eſtate.
Toll. }

A Preſcription is when a Man claims any Thing that he, his Anceſtors or Predeceſſors, or they whoſe Eſtate he hath, have, or uſed Time out of Mind to have.

Preſcription, what.

B A Preſcription muſt be always alledged in the Perſon, and muſt have by common Intendment a lawful Commencement; but a Cuſtom muſt be always alledged in the Land, and muſt alſo be a reaſonable Cuſtom. *6 Rep.* 60, 61.

A Preſcription muſt be alledged in the Perſon, but a Cuſtom in the Land.

C As to Preſcription for Toll, *vid. Raym.* 232, 233, 327. 2 *Saund.* 117.

For Toll.

D Upon a *Modus decimandi, &c.* 1 *Saund.* 142, 3 *Lev.* 389.

Modus decimandi.

E By a Corporation. 1 *Saund.* 344, *&c.* concerning Toll. *Vide* 2 *Lutw.* 1348, 1515, 1522, *&c.* 2 *Lev.* 27, 96, 97.

By a Corporation.

F One cannot preſcribe to have two ſeveral Ways by one joint Preſcription; but he muſt make ſeveral Preſcriptions for them: *Trin.* 23 *Car. B. R. Q.* For they might both begin by Grant at one and the ſame Time.

One cannot preſcribe for two Ways by one Preſcription.

G A Copyholder cannot preſcribe againſt his own Lord *omnino*, nor againſt any other, but only in the Name of his Lord. *Vid.* 2 *Saund.* 325, 326. *Preſcriptio, & ſola paſtura. Ibid.* 326. 1 *Lev.* 253. 2 *Lev.* 2.

Copyholder cannot preſcribe againſt his Lord.

H Two Tenants in Common cannot preſcribe for one Warren: *Trin.* 23 *Car. B. R.* That is ſeverally, they cannot both have it ſeverally, but in Common. See more of Common, *&c.* 1 *Saund.* 344, 346. 2 *Saund.* 116.

Nor two Tenants in Common for one Warren.

Copyholder in Fee, may alledge a Cuſtom againſt his Lord.

A **A Copyholder** for Life cannot preſcribe againſt his Lord by Reaſon of his Copyhold, but a Copyholder in Fee, may, I ſuppoſe, alledge a Cuſtom againſt his Lord, for he holds his Copyhold in the Nature of an Inheritance: *Mich.* 6. *Nov. B. S.* 1650. But an Eſtate for Life may be ſo ſhort, that a Preſcription cannot lie for him.

Preſcription for ſole Paſturage.

B **See** where Freeholders and Copyholders may preſcribe, *&c.* for the ſole Paſturage of the Land of the Manor. 1 *Saund.* 351, 352, *&c.*

And where Lord and Owner may be excluded.

C **Alſo** where the Lord and Owner of the Land may be wholly excluded at all Times. *Id. ibid.*

Preſcription for a Fold-courſe.

D **That** a Man may claim a Fold-courſe, and exclude the Owner of the Soil by Preſcription. *Id.* 353.

For the Nomination to an Office by the King.

E **Preſcription** in an Office to be exerciſed by four Perſons, to be named by the King from Time to Time, good. 1 *Lutw.* 381. See 1 *Lev.* 71, 176, 231.

For what a Man ought not to preſcribe.

F **A Man** ought not to preſcribe for that which the Law of common Right gives. *Noy* 20.

Every Preſcription to make a Fence, is intended to begin by Grant or Conſent.

G **Every** Preſcription to make a Fence, is intended to begin by Grant or Conſent to do it. *Cro. Eliz.* 709. *pl.* 30.

What Inheritance may be claimed by Preſcription, not by Uſage.

H **No** Man can claim a Rent, Common, or other Inheritance by Uſage, but by Preſcription he may, 6 *Rep.* 65. *b.*

What Preſcriptions are not good.

I **No** Preſcription can be good, but where ſome Profit comes to him who preſcribes for it. 1 *Leon.* 108. Caſe 147.

Twenty Years makes a Preſcription for the Church, and forty Years againſt it.

K **Twenty** Years in the Eccleſiaſtical Law, makes a Preſcription for the Church, and forty Years againſt the Church. *Cro. Jac.* 454.

In a Preſcription for an Office, it muſt be ſaid to be an ancient Office; and ſo for a Cuſtom in a Vill: But for a Seat in a Church to a capital Meſſuage, the Word *Ancient* is included.

L **Where** a Man preſcribes to have an Office and the Profits thereto, he ought to ſhew it to be an ancient Office; and for a Cuſtom in a Vill, he ought to ſhew it to be *Antiqua Villa*: But when a Man is ſeized of a Capital Meſſuage, and preſcribes to have a Seat in the Chancel thereunto appertaining, it is therein included that it is an ancient Meſſuage. *Cro. Jac.* 605, 606.

How a Corporation muſt preſcribe.

M **A Corporation** cannot preſcribe but only in himſelf and his Predeceſſors, not in a *Que Eſtate*. *Cro. Jac.* 673. *pl.* 5.

What may be claimed by Preſcription, not by Uſage.

N *Bona & Catalla felonum* cannot be appendant or appurtenant to a Manor, becauſe they do not lie in Preſcription; but muſt be claimed by Grant only. 9 *Rep.* 27. *a.* But Wreck, Waif, or Stray, may be claimed by Preſcription. *Ibid.* 28.

A **Pariſhioners** cannot preſcribe, but they may alledge a Cuſtom. *Co. Entr.* 652. *Cro. Eliz.* 441. *Cro. Car.* 419.

Patiſhioners cannot preſcribe, but may alledge a Cuſtom.

B **Inhabitants** may preſcribe in a Matter of Eaſement, or to a Way to a Church, or to a Well, or to a Burying-Place. 2 *Roll.* 290. *Show. Rep.* 257. *Cro. Car.* 419.

In what Inhabitants may preſcribe.

C **Where** a Preſcription is laid in the Tenants or Occupiers claiming an Intereſt or Profit, is ill: But where ſuch Preſcription is only for an Eaſement, it is good. 2 *Lev.* 164. 2 *Vent.* 186. *Palmer* 333. *Hob.* 118. 3 *Leon.* Caſe 244.

Where a Preſcription in Occupiers claiming an Intereſt, it is ill.

But for an Eaſement it is good.

D **A Preſcription** for a Way ought to be in him who hath the Inheritance. *Cro. Car.* 418. *pl.* 8. 419.

How a Preſcription for a Way ought to be.

E **A Man** cannot plead a Preſcription againſt a Preſcription; but the Preſcription alledged ought to be anſwered. *Cro. Car.* 432. *pl.* 2.

A Preſcription cannot be pleaded againſt a Preſcription.

F **A Preſcription** for all the Inhabitants of the Vill, *Omni tempore anni*, to dance upon the Plaintiff's Land. After Verdict it was moved, That if it was good, it ought to have been pleaded by Way of Cuſtom of the Vill, and not Preſcription in the Perſons: But it was adjudged to be a good Cuſtom, and neceſſary for the Inhabitants to have their Recreation: And although peradventure this might have been naught upon a Demurrer, yet it is good after a Verdict. 1 *Lev.* 176.

A Cuſtom for all the Inhabitants in a Vill to dance upon the Plaintiff's Ground, and good.

G **In** an Action upon a falſe Return of a *Mandamus*, the Plaintiff ſets forth, that for two hundred and fifty Years paſt, all Attorneys elected, and the Court of *York* ought to be ſworn before the Sheriffs: And after Verdict it was moved, That this was no Preſcription, Time out of Mind. But this Exception was not allowed, becauſe it is tantamount; and it ſhall be preſumed, that the Preſcription was proved at the Trial. 5 *W. & M.*

Where a Preſcription ſhall be intended after a Verdict.

H **Tenant** for Years preſcribes in himſelf for a Way, and after a Verdict it was held to be void, and Judgment was arreſted. *Mich.* 8 *W.* 3.

Tenant for Years cannot preſcribe in himſelf for a Way.

I **Preſcription** to have *ſolam & ſeparalem Paſturam per totum Annum*, is good. 1 *Lev.* 153. The ſame Preſcription in Freeholders, and Cuſtom in Copyholders. 1 *Lev.* 268. *Vide* 2 *Lev.* 178. The ſame without ſaying, That it was for Cattle Levant and Couchant, and yet good. 2 *Lev.* 21.

Preſcription to have *ſolam & ſeparalem Paſturam*, and good.

Without ſaying, of Levant and Couchant.

K **A Preſcription** for Grinding ought to be of all Corn which is not ground and ſpent in the Houſe: For Corn which is not ground, may be ſpent in the Houſe. 1 *Lev.* 231.

How a Preſcription to grind at the Plaintiff's Mill ought to be.

Where in a Preſcription for Common, it muſt be for Cattle Levant and Couchant.

A **A Preſcription** for Common, *Pro omnibus averiis quolibet Anno omni tempore Anni tantum ad manerium præd' pertinen' & ſpectan'*. This was naught; becauſe the Preſcription for Common was not for Cattle Levant and Couchant. *Lutw.* 1359. See *Mellor*'s Caſe. 1 *Saund.*

Preſcription to have Common after Hay cut.

B **Preſcription** to have Common appendant in another Man's Land, after the Hay is cut, is good. 1 *Leon.* 11.

Preſcription to have the ſole Profits of the Land, from the cutting of the Corn to the ſowing again.

C *A.* ſeiſed of Land may plow and ſow it, and cut, and carry away the Corn; and when the Corn is carried, *B.* may preſcribe to have the Land as his Several; and the other who ſowed it cannot meddle with it, but only plow and ſow it again.

Where a Preſcription takes away the whole Profits, and where not.

D **A Diverſity** was taken where a Preſcription takes away the whole Intereſt of the Owner of the Land, and where a particular Profit is reſtrained: In one Caſe it is good, and in the other Caſe it is void. *Ibid.*

A Preſcription to cut down all the Thorns growing in ſuch a Place, is good.

E **A Man** preſcribes to cut down and take all the Thorns growing in ſuch a Place, to expend in his Houſe, or about his Lands, and pertaining to his Houſe and Lands; and held a good Preſcription. *Cro. Jac.* 256. *pl.* 15.

A Preſcription for Toll, where good.

Toll through.

F **Preſcription** for Toll for Goods put aſhore within a Manor, or for paſſing over his Manor, is good. 3 *Lev.* 424, 425. Toll through, without Conſideration, is void. *Moore, pl.* 793. 3 *Lev.* 425.

What Franchiſes a Man may preſcribe for, and what he muſt have Charter for.

G **What** Franchiſes and Things a Man may make a Title to by Preſcription without a Charter, and how it may be loſt by Interruption; and what Franchiſes or Things a Man cannot have without Charter. *Co. Lit.* 114. 9 *Rep.* 276.

A Man may preſcribe to have Free-warren in his Manor, as well in the Freeholders, as his own Lands.

H **A Preſcription** to have Free-warren in his own Manor, as well in the Lands of his Freeholders, as in his own Demeſnes, is good. *Cro. Car.* 311. *pl.* 2. See Title **Quo Warranto.**

A Tenant for Years preſcribes for Windows to an antient Houſe, and good.

The Preſcription is tied to the Houſe, and is not perſonal.

I **Leſſee** for Years ſays, That he is poſſeſs'd of an antient Houſe in *W.* wherein were three Windows, Time out of Mind, to give Light, *&c.* which the Defendant ſtopped up: Exception was taken, that he had not alledged any Perſon in whom the Preſcription may be fix'd. *Curia.* The Preſcription is tied to the Houſe, and not to any perſonal Preſcription, but is good without it. *Cro. Car.* 325. *pl.* 8. 326.

A **A Man** preſcribes for Common, and Iſſue thereupon; but found that they uſed to pay for it an Hen every Year: This is Collateral from the Preſcription, and the Preſcription is good, *Sans* alledging of it; and if the Hen was not paid, the Plaintiff's Cattle going upon the Common might be diſtrained for it. *Cro. Eliz.* 405. *pl.* 15.

More is found in the Verdict than is in Preſcription, and yet good.

B **But** where a Man preſcribes for Pot-Water, and upon the Iſſue it was found, paying ſix Pence a Year, there was a Condition executory every Year, which went with the Preſcription, and therefore ought to be entirely alledged. *Ibid.*

Note, The Difference between this and the foregoing.

C **So** in a Preſcription to have Common, the Jury found it to be paying every Year a Penny: Here the Preſcription is intire, whereof the Payment of one Penny is Parcel, which ought to have been intirely alledged in the Preſcription in the Plea; and therefore naught. *Cro. Eliz.* 563. *pl.* 22. and 546.

Part of a Preſcription (which is intire) only found.

D **How** a Preſcription for a Water-Courſe to a Mill ought to be. 4 *Rep.* from 48, to 49. *a.*

How a Preſcription for a Water-Courſe to a Mill ought to be.

E **A Way** muſt not be claimed as Appendant or Appurtenant to an Houſe, becauſe it is only an Eaſement, and no Intereſt. *Telv.* 159.

A Way cannot be Appurtenant to an Houſe, and why.

F **A Man** may preſcribe for a Way from his Houſe thorough a certain Cloſe to Church, though he himſelf hath Lands next adjoining to the ſaid Houſe, through which of Neceſſity he muſt firſt paſs; for the general Preſcription ſhall be applied only to the Lands of others. *Palm.* 387, 388.

Where a Man may preſcribe for a Way, though it goes through ſome of his own Land.

G **Where** a Man preſcribes for a Way, he muſt ſhew *a quo Loco ad quem Locum*, the Way is claimed. *Telv.* 163.

Terminus a quo ad quem.

H **Where** a Man preſcribes for a Way to ſuch a Cloſe, he muſt ſhew what Intereſt he hath in the Cloſe: *Aliter*, where he preſcribes for a Way to ſuch a Field, for that may be intended a Common Field. *Latch.* 160.

How to preſcribe for a Way to a Cloſe.

How to a Common Field.

I **He** that preſcribes for a Way, muſt ſhew certainly whether it be a Horſe-way, Foot-way, or Cart-way. *Telv.* 163.

How to preſcribe for a Way.

K **If** a Man preſcribes to have *Viam tam pedeſtrem quam equeſtrem pro omnibus Carriagiis*: By this he ſhall not have a Cart-way, for every Preſcription is taken ſtrictly. 3 *Leon.* 13. And *Dyer* ſaid, That it was good to preſcribe *Habere viam pro omnibus Carriagiis* generally, without ſpeaking of Horſe-way, Cart-way, or other Way.

How to preſcribe for a Way *pro omnibus Carriagiis* generally.

L *De antiquo* in a Count is a good Preſcription. *Skinner* 621.

Preſentation.

See { **Preſentment to a Church.**
Quare Impedit.

Preſentation, what.

A **THE Patron's Preſentation is the Nomination of a Clerk to the Biſhop, to be admitted by him, and inſtituted into the Church, or Benefice, which is void.**

If the King preſent by Lapſe, when he ought to preſent as Patron, it is void.

B **If** the King do preſent to a Church by Lapſe, where he ought to preſent *pleno jure*, and as Patron of the Church, ſuch a Preſentation is not good. *Hill.* 23 *Car. B. R.* For the King is deceived in his Grant, by miſtaking of his Title, which may be prejudicial to him, his preſenting by Lapſe entitling to that only Preſentation which is lapſed to him.

The King may preſent by his Letter to the Ordinary.

C **The** King may, in the Opinion of ſome, preſent to a Church, by his Letter ſent to the Ordinary, to inſtitute and induct ſuch an one his Clerk to the Living. *Mich.* 1649. *B. S.* The moſt ſecure Way is to have a Preſentation under the Great Seal, becauſe the King cannot regularly take or grant any Thing but by Matter of Record.

A Patron cannot preſent himſelf: And why.

D **A Patron** cannot preſent himſelf; for if he could, he would be both Donor and Donee, which is inconſiſtent. 14 *H.* 8. *fol.* 4.

Difference between a Preſentation and a Collation.

E **There** is a Difference between a Collation and a Preſentation; for a Collation is the giving of the Church to the Parſon; and a Preſentation is a giving and offering of the Parſon to the Church. 1 *Leon. Caſe* 307.

A Preſentation of a Layman, is not a Nullity.

F **A Preſentation** of a meer Layman to a Benefice, is not Nullity; and he ſhall be Parſon *de Facto. Lut.* 40.

A **One** of the Univerſities do preſent, where the Patron is a Popiſh Recuſant convicted. *Lutw.* 1117.

One of the Univerſities preſent, where the Patron is a Papiſt convicted.

B **In** a *Quare Impedit*, a Man muſt alledge a Preſentation in himſelf, or in thoſe under whom he claims. *Vaugh.* 7, 8, 57.

A Preſentation muſt be alledged in a *Quare Impedit*.

C **When** a Preſentation is traverſable, and when not. See Title **Quare Impedit.** *Lit. Rep.* 14.

When a Preſentation is traverſable, and when not.

D **In** a *Quare Impedit*, the Preſentation ought to be alledged in him who hath the abſolute Inheritance: Alſo a Preſentation by Tenant for Life or Years; or Grantee of the next Avoidance is no Title for him in Reverſion. *Cro. Eliz.* 518. *pl.* 44.

How the Preſentation ought to be alledged in a *Quare Impedit*.

Where it is no Title.

E **The** Preſentation is the Subſtance, and ought to be travers'd. *Lit. Rep.* 14.

The Preſentation is the Subſtance.

F **Though** the King may preſent by Uſurpation; yet he ſhall never preſent by Uſurpation, if in the Letters Patents of Preſentation he preſents by ſome Title which he hath not: But if he preſent generally, making no Title by his Preſentation, and his Clerk be received, and dies, he hath gained a Title by Uſurpation. *Vaugh.* 14. A void Preſentation makes no Uſurpation. *Ibid.*

Where the King gains a Title by Uſurpation, and where not.

G **Where** a Benefice becomes void by accepting of another without a Diſpenſation; and where the Patron is bound to preſent without Notice, and where not. *Vaugh.* 131.

When a Benefice becomes void by accepting of another.

Preſentment.

Preſentment, what, and wherein it differs from an Indictment.

A Preſentment is a ſhort Note drawn up in English by the Jury, for Inſtructions to draw the Indictment by. And it differs from an Indictment, in that an Indictment is drawn up at large in Latin, and brought ingroſſed to the Grand Jury to find. A

Reaſons for quaſhing a Preſentment before the Commiſſioners of Sewers.

A Preſentment taken before Commiſſioners of Sewers, was quaſhed. 1. Becauſe it did not appear in the Preſentment by what Authority the Commiſſioners did ſit who took the Preſentment. And 2. Becauſe it did not appear, That any of the Commiſſioners before whom the Preſentment was taken, are of the *Quorum*, (*Hill.* 1649. *B. S.*) as is directed by the Statute that gives them their Authority. B

Preſentments in Court-Leets.
31 Eliz. cap. 7.

Concerning Preſentments at a Court-Leet, *&c.* See 2 *Saund.* 290. and Stat. of 31 *Eliz. cap.* 7. C

Preſentment to a Church.

See { **Patron.**
Preſentation.

The King's Grantee ſhall preſent upon an Outlawry.

A **Man** is outlawed, a Church becomes void, the King's Grantee of *Omnia bona & catalla utlagatorum* preſents; and held lawful. *Hob.* 302, 303. D

A **The** Preſentment that ſhall be within ſix Months, ſhall be accounted from the Time of the Avoidance, and not from the Time of the Preſentment. 3 *Leon.* Caſe 66. *fol.* 47.

When the Commencement of the ſix Months for the Preſentment ſhall be.

Preſumption.

See Intendment.

B Preſumption is of three Sorts: 1. Violent Preſumption, as if one be found to be killed in a Houſe, and a Man is ſeen to come out of that Houſe with a bloody Knife; this is a violent Preſumption, that that Man was the Murderer. 2. Probable, which hath but a ſmall Effect. 3. Levis præſumptio, which is of no Prevalency at all.

Three Sorts of Preſumption.

C **Where** the Plaintiff doth declare in an Action of Debt for Rent behind, due upon an Indenture of Demiſe for Years, it ſhall not be preſumed that there is any other Rent due, or Leaſe made, than that upon and for which the Plaintiff doth declare: *Mich.* 22 *Car. B. R.* For this would be a foreign Conſtruction, and for which there is no Inducement to warrant it.

It ſhall not be preſumed, that more is due than the Plaintiff declares for.

D **Where** divers Houſes are let to one by one Leaſe, the Court will preſume that the Leſſee is in Poſſeſſion of them all, if he be in Poſſeſſion of any of them, if the contrary doth not appear: *Paſch.* 22 *Car. B. R.* For although the Leſſee may poſſibly have paſſed away his Intereſt in ſome of them to other Perſons; or the Leſſee did not enter into them all, by Virtue of the Leaſe; yet this not appearing to the Court, they will not preſume it to be ſo, but will judge, that the Leaſe took Effect as to all.

If a Leaſe be made of divers Tenements, if the Leſſee be in Poſſeſſion of any, he ſhall be preſumed to be in Poſſeſſion of all.

E **One** Court of Juſtice will not preſume that another Court of Juſtice will do Injuſtice, except it do plainly appear unto them that it is ſo: *Paſch.* 22 *Car. B. R.* For each Court ought to have an honourable Opinion of the Proceedings of another Court. *Vide Keb.* 81. *pl.* 57.

One Court will not preſume that another will do Injuſtice.

Power preſumed.

To avoid a Fraud, and to ſupport Leaſes which Truſtees might have, empowered *Ceſtuy que Truſt* to make a Conveyance; and a Power was preſumed to have been executed for that Purpoſe, though not proved. *Skin.* 77, 78. A

Act of Parliament preſumed.

Act of Parliament preſumed to have been made to ſupport a Poſſeſſion ſince the Time of the Black Prince, which otherwiſe wou'd be a wrongful Poſſeſſion. *Skin.* 78. B

Principal and Acceſſory.

See {**Acceſſory.**
{**Felony.**

Principal and Acceſſory, what.

THE Principal is the Perſon who actually commits the Crime: The Acceſſory is he who is aſſiſting of him in the Doing of it, or elſe in concealing of him after it is done. C

A Man that aids to ſtab another is only an Acceſſory.

One that is preſent and aiding to the Stabbing of another, is not a Principal, but only an Acceſſory to the Stabbing, within the Act of 1 *Jac.* that made Stabbing to be Murder: *Hill.* 22 *Car. B. R.* For the Act ſhall not be lately interpreted, becauſe ſo penal. See the Statute. D

He who commands a Treſpaſs, is a Principal.

He that commands a Treſpaſs to be done, is not an Acceſſory, but a Principal. 1 *Lev.* 204. E

Where Proceedings ſhall be againſt Acceſſories.

Stat. Ann. ſeſſ. 2. cap. 9.

By the Statute of *Annæ Reginæ, ſeſſ.* 2. *cap.* 9. it is enacted, That if any Principal ſhall be convicted of any Felony, or ſhall ſtand mute, or challenge above twenty Perſons of the Jury, it ſhall be lawful to proceed againſt any Acceſſory either before or after the Fact, in the ſame Manner as if ſuch principal Felon, had been attainted thereof; notwithſtanding any ſuch principal Felon ſhall be admitted to the Benefit of his Clergy, pardoned or delivered before Attainder; and to ſuffer the ſame Puniſhment as if the Principal had been attainted. F

A **Alſo** by the ſame Statute it ſhall be lawful to proſecute every Perſon for buying of ſtolen Goods, knowing them to be ſtolen, as for a Miſdemeanor; and to be puniſhed by Fine and Impriſonment, although the Principal ſhall not be convicted of the ſaid Felony: But if the Principal ſhall afterwards be acquitted, then the other Perſon ſhall be excuſed: See the Statute of 3 & 4 *W. & M. cap.* 9. *ſect.* 4. about Acceſſories and Buyers of ſtolen Goods, and ſee the Title **Acceſſory.**

Buyers of ſtolen Goods may be proſecuted for a Miſdemeanor, and fined and impriſoned.

B **In** the higheſt and loweſt Offences, there are no Acceſſaries, for all are Principals. 2 *Salk.* 418.

Where all are Principals.

C **Therefore** in Treaſon, the Writer or Concealer is as guilty as the Contriver or Actor. *Ibid.*

Treaſon.

D **So** in Battery, if *A.* only holds the Door while *B.* beats *C. A.* is as guilty as *B. Vide, &c. Ibid.*

Battery.

E **If** ſeveral make a Riot, and a Man is killed, they are all Principals in the Murder. 2 *Salk.* 334.

Murder.

F **Where** a Statute makes an Offence Felony, Acceſſories (properly) tho' not named, are within it. 2 *Salk.* 542.

Acceſſories within a Statute.

G *Aliter*, where it makes a particular Fact more Penal. *Ibid.*

Priſon and Priſoners.

See { **Eſcape.**
Habeas Corpus.
Sheriff.

H **Every Place where a Man is reſtrained of his Liberty is a Priſon.** Cro. Car. 210.

A Priſon, what.

I **A Priſoner** for Debt may be removed from the *Fleet* to the *King's Bench*, and from thence to the *Marſhalſea* again; but there muſt be ſomething to charge him with, either in the Body of the *Habeas Corpus* or Return, or elſe ready in Court upon his bringing up. *Dyer* 275.

A Priſoner for Debt may be removed from Priſon to Priſon.

K **One** that is impriſoned upon a *Capias utlagatum* ought to be impriſoned as ſtrictly as he that is in Priſon upon an Execution: *Trin.* 1850. *B.S.* 3 *Julii.* For he that refuſeth to anſwer the Law, offends in

A Man impriſoned on a *Capias utlagatum* to be kept as ſtrictly as one upon Execution.

as high (if not in a higher) Nature than he that is condemned by the Law; and is to be puniſhed as highly, becauſe the Publick is much concerned herein. But this is now altered by a Statute made 4 & 5 *W.* & *M.* which ſee in Title **Outlawry.**

Priſoner for the King not to be charged with Actions.

A Priſoner for the King ſhall not be charged in Actions of the Parties without Leave of the Court. 1 *Lev.* 125, 146. A

Priſoner diſcharged upon Common Bail, if no Declaration againſt him in two Terms.

If a Priſoner be committed to the Marſhal by this Court, and the Plaintiff doth not declare againſt him in two Terms incluſive from the Time of his Commitment, the Priſoner ſhall be diſcharged at the End of the ſecond Term upon common Bail. B

The Day of Commitment to be indorſed on the Back of the Writ.

It is the Courſe of the Court, when a Priſoner is delivered over by this Court unto the Marſhal of the Court, to indorſe the Day of this Delivery upon the Back of the Writ, that it may be known when he was firſt committed to the Marſhal's Cuſtody. *Mich,* 1650. *B. R.* 20 *Nov.* C

B. R. may ſend for a Priſoner in the *Marſhalſea* by Rule of Court: But not from another Priſon without an *Habeas Corpus.*

This Court may ſend for a Priſoner out of the Priſon of the *Marſhalſea* by Rule of Court, without a *Habeas Corpus*; becauſe that Priſon doth belong to this Court, and they have the Command of the Priſoners there, in order to the Execution of Juſtice, and the Proceedings in that Court; but they cannot ſend for a Priſoner out of any other Priſon, but by a Writ of *Habeas Corpus.* By *Rolle* Chief Juſtice: *Mich.* 1650. *B. S.* Becauſe the ordinary Power of this Court extends not unto other Priſons and Priſoners. D

What the Defendant's Attorney muſt do before he diſcharges a Priſoner for want of Proceedings.

Every Attorney of this Court who ſhall diſcharge any Priſoner, charged with any Action here in Court depending, out of Priſon, for the want of Proceedings within two Terms, ſhall give Notice to the Plaintiff in the ſaid Action, or to his Attorney, to appear before one of the Judges of this Court to ſhew Cauſe, why ſuch Priſoner ought not to be diſcharged for want of proſecuting, before he ſhall procure any Warrant under the Hand of any Judge of this Court for the diſcharging of ſuch Priſoner out of Priſon; and if the Plaintiff in the ſaid Action, or his Attorney, (upon Notice to them or either of them given) ſhall not appear to ſhew Cauſe to the contrary, then upon Oath to be made of ſuch Notice, ſuch Priſoner againſt whom no Proceedings have been within two Terms then next preceding, ſhall be diſcharged out of Priſon, *Per Cur. Paſch.* 16 *Car.* 2. E

A Priſon taken upon a *Capias utlagatum* after Judgment, ſhall be in Execution without Prayer of the Plaintiff.

A Priſoner taken upon a *Capias utlagatum*, a Year and a Day after the Judgment recovered againſt him, ſhall be in Execution for the Debt and Damages, without an expreſs Prayer to charge him in Cuſtody. 5 *Mod.* 200, 201, 203. F

A **That** if any *Habeas Corpus* or *Certiorari* be granted and it be returned, That the Priſoner is holden in Priſon by Judgment given againſt him, he ſhall preſently be remanded to continue in Priſon according to Law, without being bailed againſt the Plaintiff's Will.

No *Habeas Corpus* or *Certiorari* to be granted to bail a Priſoner in Execution.

2 H. 5. cap. 2.

B **Every** Judge of the King's Bench may remit Priſoners with their Indictments, to the Places where the Crimes were committed.

Who may ſend Priſoners to another County.

8 H. 8. cap. 6.

C **No** Sheriff, Bailiff, or other Officer, ſhall carry any Perſon under Arreſt to any Tavern, Alehouſe, or other publick Drinking-houſe, without his Conſent, ſo as to charge him for any Beer, Ale, Wine, Tobacco, or any other Thing, but what he ſhall freely call for of his own Accord; nor ſhall demand or receive more from him for ſuch Arreſt or Waiting, than by Law ought to be, (until an Appearance procured, Bail found, or Agreement with the Adverſary, or ſent to the County-Gaol;) nor ſhall take or exact any more for keeping ſuch Perſon out of Priſon, than what he ſhall of his own voluntary Accord truly give; nor ſhall take any more for Lodging than what is reaſonable, or what ſhall be adjudged to be ſo by the next Juſtice of the Peace, or at the next Quarter-Seſſions 22 & 23 *Car.* 2. *cap.* 2. *ſect.* 9.

No Perſon arreſted to be carried to any Spunging-houſe, without his Conſent.

Nor receive more for an Arreſt than he ought by Law.

Nor ſhall take any more than what ſuch Priſoner ſhall voluntarily give.

12 & 23 Car. 2. cap. 2. ſect. 9.

D **By** the Statute 1 *Annæ*, *cap.* 6. *ſeſſ.* 2. it is enacted, That any Perſon committed, rendered or charged, or to be committed, rendered or charged to the *Queen's Bench* or *Fleet* Priſons in Execution, or on Meſne Proceſs, or Proceſs of Contempt, and before Payment or Satisfaction made to the Plaintiffs or his Creditors, or be cleared of the Contempts, ſhall eſcape from the *Queen's Bench* or *Fleet*, or ſhall go at large after the 20 of *January*, upon Oath thereof in Writing, to be made by one or more credible Perſons, before any one Judge of the Court where ſuch Action was entered, or Judgment and Execution obtained; or where the Party was ſo committed or charged as aforeſaid; ſuch Judge, before whom ſuch Oath ſhall be made, is hereby required from Time to Time to grant to any Perſon whatſoever, who ſhall demand the ſame, one or more Warrant and Warrants under his Hand and Seal, therein reciting the Action or Actions, Execution, Contempt or Contempts, wherewith ſuch Perſon was charged or committed, which Warrant ſhall be in Force in all Places of *England*, and directed to all Sheriffs, Mayors, Bailiffs, Conſtables, Headboroughs and Tithingmen

The Statute for taking up of Priſoners out of *Queen's Bench* and *Fleet*, upon an Eſcape-Warrant, when out of Cuſtody.

Where the Oath to be made.

The Warrant to be granted.

To be in Force all over *England*.

All Officers commanded to obey it.

therein; and thereby commanding them in their reſpective Counties, Cities, Towns and Precincts, to ſeize and retake ſuch Perſon ſo eſcaped, and to convey and commit him to the Common Gaol where he ſhall be taken, there to remain without Bail or Mainpriſe, nor be delivered or removed from thence, until Payment or Satisfaction made to the reſpective Plaintiff or Plaintiffs, Creditor or Creditors. See in the Act at large ſeveral other Matters.

5 **Ann.** 2 **ſeſſ.**

1 **Ann. cap.** 6. **ſeſſ.** 2.

The Party taken up upon an Eſcape, ſhall be committed to the Sheriff of the County where Debtors are kept; and the Sheriff to be anſwerable for his Eſcape.

By another Act made 5 *Annæ Reginæ*, it is enacted, That every Perſon who ſhall be ſeized by Virtue of the Act of 1 *Annæ*, herein laſt before-mentioned, ſhall inſtead of being committed to the County-Gaol where he ſhall be taken, be committed to the Sheriff of the County where he keeps Priſoners for Debt, and ſhall there remain in ſuch Manner, as if he had been committed to the County-Gaol; and if he ſhall eſcape, the Sheriff ſhall be anſwerable as in the Caſe of any other Eſcape. A

Judges to make Warrants for ſeizing of Priſoners upon Affidavit made before a Commiſſioner to take Affidavits.

And if the Priſoner ſhall be ſeen in the Country, then upon Oath thereof made before one of the Commiſſioners of the ſame Court for taking of Affidavits, and upon filing of the Affidavit, any of the Judges of the reſpective Courts mentioned in the former Act, may grant like Warrants for the ſeizing of ſuch Priſoner. B

How to ſupercede a Priſoner out of Priſon in a County-Gaol.

Where the Defendant is in a County-Gaol, if he put not in good Bail, then before he can be ſuperſeded out of Priſon for the Plaintiff's not declaring againſt him within two Terms incluſively, the Practice is for the Gaoler to make a Certificate of the Precept, and of the Time of the Priſoner's being brought into his Cuſtody, and that there is no *Habeas Corpus* ſince brought, or Declaration delivered to him, to be delivered to the Priſoner; and alſo there muſt be a Certificate from the Clerk who files the Bills, that there is not any Declaration filed in the Office againſt ſuch Priſoner; and therefore, if the two Terms are paſt, a Judge ſigns a Warrant for a *Superſedeas*. C

What Certificate there muſt be.

If a Priſoner is not charged in Execution within two Terms after the Judgment, he ſhall be diſcharged upon Common Bail.

If there ſhall be Judgment againſt a Priſoner in the *King's Bench*, and the Defendant be not charged in Execution thereupon, before the End of the ſecond Term after the Judgment, (there being no Writ of Error pending) then Common Bail ſhall be filed for ſuch Defendant, upon Notice to the Plaintiff's Attorney firſt given. *Trin.* 9 *W.* 3. *B. R. Regula Generalis.* D

For Delivery of Declarations againſt Priſoners.

4 & 5 W. & M. cap. 21.

A **Since** the making of the late Act of 4 & 5 *W. & M. cap.* 21. *For declaring againſt Priſoners in the Cuſtody of Sheriffs, Bailiffs of Liberties, &c.* which is as followeth, *viz.* That if any Perſon be taken or charged in Cuſtody at the Suit of any Perſon upon any Writ or Writs out of any of the Courts of *Weſtminſter*, and impriſoned for want of Sureties for his Appearance, the Plaintiff in ſuch Writ may, before the End of the next Term after ſuch Writ ſhall be returnable, declare againſt ſuch Priſoner in the Court out of which the Writ or Writs ſhall iſſue; whereupon ſuch Priſoner ſhall be taken or charged into Cuſtody; and may cauſe a true Copy thereof to be delivered unto ſuch Priſoner, or to the Gaoler or Keeper of the Priſon, or Gaoler in whoſe Cuſtody ſuch Priſoner ſhall be and remain, to which Declaration the ſaid Priſoner ſhall appear and plead: But if he ſhall not appear and plead thereto, the Plaintiff ſhall in ſuch Caſe have Judgment, as if the Priſoner had appeared and refuſed to plead. That in all ſuch Declarations againſt ſuch Priſoners, it ſhall be alledged in the Cuſtody of what Sheriff, Bailiff, or Steward of any Franchiſe, or other Perſon having Return and Execution of Writs, ſuch Priſoner ſhall be at the Time of ſuch Declaration; which Allegation ſhall be as good and effectual, as if ſuch Priſoner was in the Cuſtody of the Marſhal of the *Marſhalſea*: The Judges of the Court of Queen's Bench have hereupon made this enſuing Rule:

How the Declaration ſhall be.

The Rule made by the Judges of the Court of King's Bench, for the proceeding upon this Act.

B *1ſt*, **That** no Copy of a Declaration be given to a Priſoner in Cuſtody before the Day of the Return of the Proceſs, upon which the Defendant was taken or charged in Cuſtody.

C *2dly*, **That** no Rule be given for the Defendant in Cuſtody, to appear and plead to any Declaration againſt him, till an Affidavit be filed with the Clerk of the Rules of the Deliverance of a Copy of ſuch Declaration, and the Time when, and the Perſon to whom the ſaid Copy was delivered, and that the Defendant was arreſted or charged in Cuſtody, by Proceſs out of this Court, returnable before the Delivery of ſuch Copy, and that the Time when ſuch Affidavit was filed, be entered upon the Affidavit by the Clerk of the Rules, and a Copy of ſuch Affidavit be produced to the Secondary before the ſigning of the Judgment.

D *3dly*, **If** a Copy of the Declaration be delivered againſt ſuch Defendant before *Menſem Paſchæ*, or *Craſtinum Animarum*, and Affidavit be made thereof and filed, and the Defendant doth not appear before the End of ten Days after *Eaſter* and *Michaelmas* Term reſpectively, Judgment may be entered againſt him if Rules have been given; but if he doth appear before the End of ten Days after the Term, he ſhall imparl until the next Term, (unleſs the Action be in *London* or *Middleſex*) and the Defendant be in Priſon within forty Miles of *London* or *Weſtminſter*; then though he doth appear before the Expiration of ten Days after the End of the Term, he ſhall plead two Days before the Eſſoin-Day of of the next Term; and in Default thereof, (Rules for Pleading having been given) Judgment may be entered againſt him as aforeſaid.

4thly, **If** a Copy of the Declaration be delivered againſt ſuch Defendant on or after *Menſem Paſchæ* in *Eaſter* Term, or *Craſtinum Animarum* in *Michaelmas* Term, or in *Hillary* or *Trinity* Term, and thereupon the Plaintiff gives Rules to appear, and anſwer; then if the Defendant appear two Days before the Eſſoin-Day of the next Term, he ſhall imparl until the ſaid next Term; but if he doth not appear within that Time, Judgment ſhall be given againſt him. A

5thly, **If** a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the Eſſoin-Day of the next Term, the Plaintiff in ſuch next Term may give Rules to appear and anſwer; and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment ſhall be given againſt him. B

6thly, **If** the Declaration be not filed before the End of the next Term after the Writ or Proceſs, by which the Priſoner was taken or charged in Cuſtody, is returnable, and Affidavit made and filed in Manner as aforeſaid before the End of twenty Days next after ſuch Term, the Priſoner ſhall be diſcharged by Common Bail, ſigned by one of the Juſtices of this Court. C

7thly, **If** any Gaoler or Keeper of a Priſon, having received a Copy of a Declaration againſt any Priſoner in his Cuſtody, ſhall ſuppreſs the ſame, and not deliver it forthwith unto ſuch Priſoner, an Attachment ſhall be iſſued out againſt him. D

The Act for the more effectual Relief of Creditors in Caſes of Eſcapes, &c.
8 & 9 W. 3. cap. 26.

By an Act made 8 & 9 *W.* 3. *cap.* 26. Intituled, *An Act for the more effectual Relief of Creditors in Caſes of Eſcapes, and for preventing of Abuſes in Priſons, and pretended Privilege-Places*, it is enacted, That all Priſoners for Contempts, Meſne Proceſs, or Execution, who ſhall be in the Cuſtody of the Marſhal or Warden of the *Fleet*, ſhall be actually detained in the ſame Priſons, or Rules of the ſame, until diſcharged by due Courſe of Law: And if at any Time, the Marſhal or Warden, or any other Keeper of Priſon, ſhall permit and ſuffer any ſuch Priſoner to be at Large out of the Rules of their reſpective Priſons, except by Virtue of ſome Writ of *Habeas Corpus*, or Rule of Court; which Rule of Court ſhall not be granted but by Motion made, or Petition read, in open Court; every ſuch going, or being out of the ſaid Rules, is adjudged, deemed, and declared to be an Eſcape. E

What ſhall be judged an Eſcape.

What Remedy the Plaintiff ſhall have upon a Recovery of a Judgment againſt the Marſhal or Warden.

That every Perſon obtaining Judgment in an Action of Eſcape againſt the Marſhal or Warden, or their lawful Deputy or Deputies, ſhall have the ſeveral Remedies already allowed by Law, for obtaining of Satisfaction; and alſo the Judges of the reſpective Courts where ſuch Judgment ſhall be obtained, upon Oath made before them by the Plaintiff in ſuch Judgment, that the ſame was obtained without Fraud or Covin; and that the Debt of the Priſoner making ſuch Eſcape, was a true and real Debt unſatisfied; ſhall, upon G

Motion made to them in open Court for that Purpoſe, ſequeſter the Fees and Profits of the Office of Marſhal and Warden, or ſo much, or ſuch Part or Proportion thereof, as the ſaid Court, wherein ſuch Motion ſhall be made, ſhall think fit and reaſonable, with reſpect to the Debt or Debts due from ſuch Priſoner who eſcap'd, together with all Coſts and Damages recovered in ſuch Action.

To ſequeſter the Profits of the Officers.

A **And** in Caſe any Marſhal or Warden, or their Deputy or Deputies, ſhall ſue out any Writ of Error to reverſe any Judgment given in an Action of Eſcape, then they ſhall be obliged to put in Special Bail, or in Default thereof, no Execution be ſtayed, nor any Sequeſtration of the Profits delayed.

They muſt put in Special Bail upon a Writ of Error.

B **That** if any Marſhal or Warden, or their reſpective Deputy or Deputies, or any Keeper of any other Priſon within this Kingdom, ſhall take a Sum of Money, Reward, Gratuity, or Security for the ſame, to procure, aſſiſt, connive at, or permit any Eſcape, and be thereof convicted, ſhall for every ſuch Offence forfeit five hundred Pounds, and his ſaid Place and Office, and be for ever incapable of executing any ſuch Office.

The Forfeitures for taking of Security, or any Ways conſenting to an Eſcape.

C **Provided,** That this Act ſhall not make void the Securities to be given by Priſoners in the Rules, ſo as ſuch Securities be not taken for the Enlargement of any Priſoner out of or beyond the Rules of the ſaid Priſons of *King*'s *Bench* or *Fleet*.

Proviſo not to diſcharge Securities given by Priſoners in the Rules.

D **That** no retaking on freſh Purſuit ſhall be given in Evidence on the Trial of any Iſſue in any Action of Eſcape againſt the Marſhal and Warden, or their Deputy or Deputies, or other Priſon-Keeper, as aforeſaid, unleſs it be ſpecially pleaded; nor ſhall any Special Plea be taken, received or allowed, unleſs Oath be firſt made in Writing, by the Marſhal or Warden, or ſuch other Priſon-Keeper, againſt whom ſuch Action ſhall be brought, and filed in the proper Office of the reſpective Courts, that the Priſoner, for whoſe Eſcape ſuch Action is brought, did, without his Conſent, Privity or Knowledge, make ſuch Eſcape. And if ſuch Affidavit ſhall at any Time afterwards appear to be falſe, and the Marſhal or Warden, or other Priſon-Keeper, ſhall be convicted thereof by due Courſe of Law, ſuch Marſhal or Warden, or other Priſon-Keeper, ſhall forfeit five hundred Pounds.

No retaking upon freſh Purſuit ſhall be given in Evidence, unleſs ſpecially pleaded, which Plea muſt be upon Oath.

What the Oath to be.

The Forfeiture.

E **That** if any Priſoner in Execution in any of the ſaid Priſons eſcapes, the Plaintiff, at whoſe Suit he was a Priſoner charged in Execution, may retake him by any new *Capias*, or *Capias ad Satisfaciendum*, or ſue out any other Execution, as if the Body of ſuch Priſoner had never been in Execution.

The Plaintiff may retake ſuch Priſoner who eſcapes, by a new *Ca. Sa.*

The Refuſal of ſhewing the Priſoner after one Day's Notice in Writing, ſhall be an Eſcape.

That if the Marſhal or Warden, or other Priſon-Keeper, ſhall, after one Day's Notice in Writing given, refuſe to ſhew any Priſoner committed in Execution, to the Creditor at whoſe Suit ſuch Priſoner was committed or charged, or to his Attorney, every ſuch Refuſal ſhall be adjudged an Eſcape in Law. A

The Marſhal, Warden, or any Priſon-Keeper, muſt, if required, give a Note in Writing, that the Priſoner is in his Cuſtody.

The Forfeiture.

That if any Perſon deſiring to charge any Priſoner with any Action or Execution, ſhall deſire to be informed by the ſaid Marſhal or Warden, or their Deputies, or any other Priſon-Keeper of any other Priſon, whether ſuch a Perſon be a Priſoner in his Cuſtody or not; the ſaid Marſhal, Warden, or any other Priſon-Keeper, ſhall give a true Note in Writing thereof, to the Perſon ſo requeſting the ſame, or to his lawful Attorney, upon Demand at his Office, or in Default thereof ſhall forfeit fifty Pounds. And if ſuch Perſon ſhall give a Note in Writing, that ſuch a Perſon is an actual Priſoner in his Cuſtody; every ſuch Note ſhall be accepted and taken as a ſufficient Evidence, that ſuch Perſon was at that Time a Priſoner in actual Cuſtody. B

The Note ſhall be a ſufficient Evidence.

Where all Incumbrances on the *King's Bench* ſhall be enrolled.

That all Mortgages, Leaſes, Truſts and Titles, of the Marſhal of the *King's-Bench*, ſhall be enrolled in the *King's-Bench* Court; and thoſe of the Warden of the *Fleet*, ſhall be enrolled in the *Common-Pleas*; and all future Grants and Mortgages, Leaſes and Truſts, ſhall be enrolled as aforeſaid, within ſix Months after the Execution thereof; and in Default thereof ſhall be void. C

By whom Offices of Marſhal and Warden ſhall be executed.

That the Offices of Marſhal of the *King's-Bench* Priſon, and Warden of the *Fleet*, ſhall be executed by thoſe who have the Inheritance, or their Deputy; for which Deputy, and all Forfeitures, Eſcapes, and other Miſdemeanors in their Offices, thoſe who have the Inheritance ſhall be anſwerable, and the Profits of the Office ſequeſtered, as if permitted by Perſons who have the Inheritance. D

How the Proceedings ſhall be againſt the Warden of the *Fleet*, *&c.*

And whereas Proceeding againſt the Warden of the *Fleet* in the *Common-Pleas* and *Exchequer* is dilatory, be it enacted, That it ſhall be lawful, upon a Bill filed, and Rule given in the ſaid Courts to plead, to be out in eight Days at moſt after filing ſuch Bill, to ſign Judgment againſt the Warden, unleſs he plead within three Days after the Rule is out. E

How to proceed againſt Priſoners in the *Fleet*.

That it ſhall be lawful for any Perſon, who hath or ſhall have any Cauſe of Action againſt any Priſoner, in the filing and entering of a Declaration in ſuch Action with the proper Officer, to deliver a Copy of ſuch Declaration to any ſuch Defendant in any perſonal Action; or to the Turnkey or Porter of the *Fleet* Priſon: And after Rule given thereupon to plead, to be out at eight Days at moſt after Delivery of ſuch F ſuch Copy or Declaration, and Affidavit made of ſuch Delivery, before one of the Juſtices of the *Common Pleas*, or Barons of the *Exchequer*, of the Delivery of ſuch Declaration to the Defendant, Turnkey, or Porter of the ſaid *Fleet* Priſon, to ſign Judgment in ſuch Action, as if ſuch Defendant had been actually charged at the Bar of the *Common Pleas* or *Exchequer* with ſuch Action.

What Chamber-Rent a Priſoner ſhall be compellable to pay.

A **That** no Priſoner ſhall pay, or be compellable to pay, any Chamber-Rent for Chambers, in either of the ſaid Priſons, for any longer Time than he is actually in Poſſeſſion of the ſaid Chamber; and that during ſuch Time as he is in Poſſeſſion of any ſuch Chamber within either of the ſaid Priſons, he ſhall not pay above two Shillings and ſix Pence *per* Week for any ſuch Chamber: And if the Marſhal, Warden, or other Priſon-Keeper ſhall take or demand any greater Sum for the Uſe of ſuch Chamber than two Shillings and ſix Pence *per* Week, ſhall forfeit twenty Pounds.

Clauſe for deſtroying all pretended Privilege-Places, as *White-Fryars*, &c.

Read the Clauſes.

Poſſe Comitatus.

To break open Doors, and ſeize Perſons and Goods.

B **For** taking away the pretended Privilege in *White-Fryars*, and ſeveral other Places (which ſee in Title **Privilege**) it is enacted, That it ſhall and may be lawful for any Perſon, who hath any Debt due to him from any Perſon reſiding in *White-Fryars*, and every other Place (mentioned in Title **Privilege** in this Book) upon legal Proceſs taken out againſt ſuch Perſon, to demand and require the Sheriffs of *London* and *Middleſex*, Head Bailiff of the Liberty of the Dutchy of *Lancaſter*, or High Sheriff of the County of *Surrey*, or Bailiff of the Borough of *Southwark*, as the Caſe ſhall require, if the Plaintiff think it requiſite, or their reſpective Deputy or Deputies, Officer or Officers; and they are hereby required to take the *Poſſe Comitatus*, or ſuch other Power as to him or them, or any of them ſhall ſeem requiſite, and enter the pretended Privilege-Places, any, or either of them, and to arreſt; and in Caſe of Reſiſtance or Refuſal, to open the Doors, or to break open any Door or Doors, to arreſt ſuch Perſon upon any Meſne or other Proceſs, Extent, or Execution; or to ſeize the Goods of any ſuch Perſon upon any Execution or Extent: And if ſuch Sheriff, Head-Bailiff, or their Deputy or Deputies, Officer or Officers, ſhall upon ſuch Requeſt neglect or refuſe, with ſuch Force, to uſe their beſt Endeavours for the executing of ſuch Proceſs, Execution or Extent, he or they ſhall forfeit to the Plaintiff in ſuch Action the Sum of one hundred Pounds, to be recovered by Action of Debt, *&c.* And if in the executing of ſuch Proceſs, any Perſon ſhall oppoſe or reſiſt any ſuch Officer, or any who ſhall be aiding or aſſiſting to him, them, or any of them, in the Execution of ſuch Proceſs, Execution, or Extent, he or they ſo offending ſhall forfeit five Pounds, and be by a Juſtice of the Peace committed to the Common Gaol of ſuch County,

The Forfeiture of the Officer.

The Penalty for reſiſting of an Officer in the Execution of his Office.

City, or Place, where ſuch Offence ſhall be committed, there to remain, without Bail or Mainprize until the next Aſſizes, Seſſions of *Oyer* and *Terminer*, and General Gaol-Delivery, to be held for ſuch County, City, or Place; and ſuch Offender being of ſuch Offence duly convicted, ſhall undergo ſuch Impriſoment, and be ſet in the Pillory, as the Court ſhall think fit.

The Forfeiture upon a Reſcue.

And if any Reſcous ſhall be made of any Priſoner taken by any ſuch Officer or Officers upon any ſuch Proceſs, Execution, or Extent, within the Limits of any the before-mentioned pretended Privilege-Places, by any Perſon whatſoever; then ſuch Perſon ſhall forfeit to the Plaintiff in ſuch Action five hundred Pounds, to be recovered by Action of Debt, *&c.* in any of the Courts of *Weſtminſter*: And if after any ſuch Recovery had againſt any Perſon for ſuch Reſcous, or aiding, aſſiſting or abetting the ſame, the Perſon or Perſons againſt whom ſuch Recovery ſhall be had, ſhall refuſe or neglect to pay to the Plaintiff in ſuch Action, or his, her, or their Executors, Adminiſtrators or Aſſigns, the Sum or Sums recovered, with full Coſts of Suit, within one Month after Judgment ſigned, and Demand made, that then upon producing a Copy of the Judgment upon which ſuch Recovery ſhall be had, and Oath made, that the Money recovered is not paid, ſhall, by Order of ſuch Court wherein the ſaid Perſon or Perſons was or were convicted of or for any ſuch Reſcous, or for aiding, aſſiſting or abetting the ſame, be tranſported by the Sheriff or Sheriffs of the County, City, or Place, where ſuch Conviction ſhall be, to one of his Majeſty's Plantations beyond Sea, there to remain for the Space of ſeven Years; and if he ſhall return again to this Kingdom within the Space of ſeven Years, he, ſhe, or they ſo returning, ſhall be, and is hereby adjudged guilty of Felony, and ſhall not be allowed the Benefit of Clergy, but ſhall ſuffer and forfeit as in Caſes of Felony, where Clergy is not allowed. A

And in the Defendant's Default of Payment of the Sum recovered within a Month after Judgment ſigned, and Demand of the Money, he ſhall be tranſported beyond Seas for ſeven Years.

And be guilty of Felony if he returns.

So alſo the Harbourers of ſuch Reſcuer.

And if any Perſon inhabiting within either or any of the ſaid pretended Privilege-Places, ſhall receive, conceal, and harbour any Perſon or Perſons, who ſhall have made any Reſcous as aforeſaid, he, ſhe, or they ſo receiving, concealing or harbouring any ſuch Perſon, knowing or having had Notice that ſuch Perſon had been guilty of ſuch Offence, being thereof convicted by a due Courſe of Law, ſhall be, by Order of that Court where convicted, by the Sheriff or Sheriffs of the County, City, or Place, where the Offence was committed, tranſported to ſome or one of his Majeſty's Plantations beyond the Seas, to remain for ſeven Years, unleſs ſuch Perſon ſhall, within one Month after Conviction, pay the Plaintiff in the Action his full Debt, with Coſts of Suit: And if ſuch Perſon ſhall return into this Kingdom within ſeven Years, then to be adjudged guilty of Felony without Clergy, and ſo to ſuffer as ſuch. B

And be guilty of Felony if he returns.

That

A **That** one Moiety of all the Penalties not particularly diſpoſed of ſhall go to the King, and the other to the Informer.

How the Forfeitures ſhall go.

B **That** this Act, and every Clauſe therein, be adjudged a general Act, and conſtrued moſt largely and beneficially for the preventing of all Miſchiefs, Abuſes, Eſcapes, and Inconveniences provided againſt in the ſaid Act.

This Act to be conſtrued beneficially for Prevention of Eſcapes.

C **That** if any Perſon be ſued for putting of it in Execution, he may plead the general Iſſue, and give the Special Matter in Evidence; and if he recovers, ſhall have double Coſts.

Any Perſon ſued may plead the General Iſſue, and recover double Coſts.

D **A Priſoner** being out of the Rules, was taken upon a Judge's Warrant on a *Sunday*, by Virtue of the new Act of Parliament; and upon a Motion to diſcharge him, the Court ſaid, That the taking by Virtue of a Judge's Warrant was in the Nature of a freſh Purſuit; and if the Priſoner was at large on a *Sunday*, he was doing Wrong to his Creditors, who ought to have his Body until they were ſatisfied: Wherefore the Court would not order his Releaſe, but left him to bring his *Audita Querela* if he thought fit, whereby the Cauſe might come judicially before them. 3 *Annæ*, *B. R.* Afterwards by an Act made 5 *Annæ*, it is enacted, That ſuch Priſoner may be taken upon the Lord's Day.

A Priſoner being taken upon a *Sunday*, by Virtue of the late Act, it was moved to diſcharge him, but the Court would not do it.

E **A Priſoner** who is in the Rules, or out upon his Day-Rule, and about his Buſineſs, *viz.* inſtructing of his Counſel, or conſulting with his Creditors, cannot be taken up upon an Eſcape Warrant; but if he goes into the Country, or to Plays, or any ſuch Sort of Place for his Diverſion and Idleneſs, he may be taken up. *Trin.* 6 *Annæ*, *B. R.*

Where a Priſoner may be taken on an Eſcape Warrant, and where not.

F **Although** a Priſoner departs from Priſon with his Keeper's Licence, yet this is an Offence; as well puniſhable in the Priſoner as in the Keeper. *Cro. Car.* 210.

It is an Offence for a Priſoner to go out of Priſon with his Keeper's Licence.

G **Breach** of Priſon is againſt the Gaoler's Conſent, Eſcape is with his Conſent: But in both the Priſoner is puniſhable. *Id. Ibid.*

Difference between Breach of Priſon and Eſcape: The Priſoner is puniſhable in both.

Privies

Privies and Privities.

See { **Aſſignment.**
Non Compos.

The five ſeveral Manners of Privities.

THERE are five ſeveral Manners of Privities. A

1. **Privies** in Blood. 4 *Rep.* 123. B

2. **Privies** in Repreſentation, as Executors or Adminiſtrators. *Latch.* 260, 261. C

3. **Privity** in reſpect of the Eſtate only. 4 *Rep.* 124. 3 *Rep.* 23. *Latch* 260, 261, 262. D

4. **Privity** in reſpect of the Eſtate and Contract together. 3 *Rep.* 123. *a.* 4 *Rep.* 124. *b.* *Latch* 260, 261, 262. E

Privity of Eſtate, what.

Privity of Eſtate only; as if the Leſſor grants his Reverſion (or if the Reverſion eſcheats) between the Grantee (or Lord by Eſcheat) and the Leſſee; there is Privity of Eſtate only: So between Leſſor and Aſſignee of the Leſſee, for there is no Contract between them. F

Privity of Contract, what.

Privity of Contract is only perſonal Privity, and extends only to the Perſons of the Leſſor and Leſſee; as where the Leſſee aſſigns all his Intereſt: Notwithſtanding this Aſſignment, the Privity of Contract remains between them, although the Privity of Eſtate be removed by the Leſſee's own Act. 3 *Rep.* 23. G

Privity in reſpect of Eſtate and Contract.

Privity in reſpect of Eſtate and Contract together; as where the Leſſor aſſigns his Intereſt, yet the Contract between the Leſſor and Leſſee, as to an Action of Debt, remains: So if, after the Aſſignment of the Leaſe, the Leſſor grants his Reverſion, the Grantee ſhall not have Debt againſt the Leſſee; for the Privity of Contract, as to the Action of Debt, holds only between the Leſſor and Leſſee. 3 *Rep.* 23, *a.* *b.* H

A **Where** the Landlord deſires to be made a Party to defend the Title of the Land in Queſtion, together with the Tenant in Poſſeſſion, in an *Ejectione firmæ*, the Court will grant it, ſo that he will enter into the Rule to confeſs Leaſe, Entry, and Ouſter: *Paſch.* 23 *Car. B.R.* In *Prince* and *Warner*'s Caſe, 2 *Maii*, 1648. *Note*, At the Trial he muſt confeſs Leaſe, Entry, and Ouſter, and inſiſt only upon the Title; and if he doth not do it, then Judgment is to be entred againſt the Leſſor's own Ejector by Default.

Landlord may be made a Party, together with the Tenant in Poſſeſſion.

B **Note,** If the Defendant doth not at *Niſi Prius* confeſs Leaſe, Entry, and Ouſter, then the Plaintiff muſt be nonſuit; but there muſt not be any Coſts taxed againſt him, but the Rule for confeſſing of Leaſe, Entry, and Ouſter, muſt be carried to the Secondary who taxes Coſts upon it, which Coſts muſt be demanded of the Defendant, by ſome Perſon having an Authority from the Plaintiff's Leſſor for ſo doing; and if the ſame are not paid, the Court will, upon Affidavit and Motion, grant an Attachment againſt the Defendant.

If Defendant will not confeſs Leaſe, Entry, and Ouſter, Plaintiff muſt be nonſuit: And the Secondary taxes Coſts upon the Rule.

C **Note,** Formerly after a Nonſuit at the Aſſizes, for want of confeſſing Leaſe, Entry, and Ouſter, the Plaintiff's Attorney immediately made out a Writ of Poſſeſſion, but the Practice is ſince altered; ſo that now it cannot be done until after the *Poſtea* comes in at the Day in Bank.

No Writ of Poſſeſſion to be made out 'till after the *Poſtea* comes.

D **Debt** for Rent brought againſt an Executor in the *Debet* and *Detinet*, not in the proper County, is naught: Becauſe, though he is ſued as Executor, he is charged as an Aſſignee in the *Debet* and *Detinet*, upon the Privity of Eſtate, not Privity of Contract. 2 *Lev.* 80.

Where Debt for Rent is brought upon the Privity of Eſtate, it muſt be laid in the proper County.

E **Land** in *Suſſex* is let, and the Rent reſerved, payable in the *Inner-Temple-Hall, London*: The Leſſor grants away his Reverſion, and brings Debt for this Rent in *London*; and adjudg'd, That it did not lie, for that the Privity of Contract being gone by the Grant of the Reverſion and Attornment, the Rent, though made payable in *London*, follows the Land, the Plaintiff being entituled thereto by only having the Land. *Cro. Car.* 183. *pl.* 2. 184.

Where the Privity of Contract is gone, Debt muſt be brought where the Land lies, though made payable in another County.

F **Where** the Privity of Contract is altered by the Aſſignment of the Executor before any Rent due; and afterwards the Privity of Eſtate by the Aſſignment of the Aſſignee of the Executor; nothing remains whereby to maintain the Action. 3 *Lev.* 295. 296. *Latch* 260, 261, 262.

Where by the Aſſignment of the Privity of Eſtate, and Privity of Contract, the Action is gone.

G **A** *Que Eſtate* cannot be pleaded where there is any Privity to the Eſtate, and Conveyance. 3 *Lev.* 19.

A *Que* Eſtate cannot be pleaded where there is a Privity.

Privity ſhall preſerve him in Remainder againſt a Fine levied by Tenant for Life or Years.

A **There** is no Difference between a Fine levied by Leſſee for Life, or Leſſee for Years; and the Reaſon that neither ſhall bar, is, for the Truſt and Privity between the Leſſee and him in the Remainder, who ſhall not be prejudiced by ſuch Acts. 2 *Lev.* 55.

Where no Privity.

B **If** Leſſee for Years aſſigns, *&c.* there is no Privity of Eſtate between him and the Aſſignee, but only of Contract. 2 *Salk.* 317.

Compoſition to preſent.

C **Note**, A Compoſition or Contract to preſent by Turns may be three Ways, *viz.*

D 1. **By** *Record*, either between Privies in Blood or Strangers; and there the Patron is not put to a *Quare Impedit*, but may ſue a *Sci. fac.* 2 *Salk.* 43.

E 2. **By** *Deed*, either between Privies in Blood or Strangers, which if executed, the Plaintiff in a *Quare Impedit* need not mention the Compoſition. *Ibid.* 44.

F 3. **By** *Parol* between the Privies in Blood only, for between Strangers Compoſition can't be *ſans* Deed. *Ibid.*

Privilege.

See
Abatement.
Attorney.
Conſtable.
Eſcape.
Parliament.
Priſon.
Protection.

Privileges, what.

G **Of Privileges there are ſeveral Sorts,** viz. **Privileges of Parliament, Privileges of Courts, and their Officers and Suitors, Privileges of Attorneys,** &c.

Where Privilege ſhall not be allowed to a privileged Perſon.

H **If** one that is a privileged Perſon in one Court, do ſue another that is a privileged Perſon in another Court he that is ſued ſhall not have his Privilege allowed.

Where the Clerks of *B. R.* ſhall not have Privilege.

I **In** what Caſe the Clerks of *B. R.* ſhall not have their Privilege allowed. 1 *Saund.* 68, 69.

A. **One** being choſen Member of Parliament, and having a Trial at the Bar, to be had before the Sitting of the Parliament, moved to have his Privilege allowed; but denied in regard the Parliament was not ſitting, nor to ſit till after the Trial. *Raym.* 12.

Privilege deny'd to a Burgeſs of Parliament.

B **In** an Action upon the Caſe for an Eſcape, the Defendant pleads the Privilege of *eundo & redeundo*, from an inferior Court, againſt a Proceſs *in Banco*, and ſeemed to the Court an ill Plea. *Id.* 100.

In Eſcape, Privilege of going and returning pleaded, diſallowed.

C **No** Privilege is to be allowed to one that hath an Indictment preferred againſt him, although he be a Peer of the Realm: *Mich.* 22 *Car. B. R.* For an Indictment is at the Suit of the King, and againſt him no Privilege is to be allowed; for all Courts of Juſtice are his, and he may ſue where he pleaſeth.

No Privilege to one indicted, tho' a Peer.

D **One** that was coming into this Court to attend upon his Cauſe, was arreſted as he was coming, and was forced to put in Bail; but upon a Motion, and making it ſo appear unto the Court, he and his Bail were both diſcharged: *Mich.* 22 *Car. B. R.* And the Party that arreſted him had been alſo puniſhed, had he not pretended that he knew not that the Party came about his Buſineſs depending in the Court; for the doing of this was an Affront to the Court as well as an Injury to the Party arreſted.

One coming to attend his Cauſe in *B. R.* was arreſted and put in Bail; upon Motion, he and his Bail were diſcharged.

E **Privilege** pleaded after Bail put in, not after general Imparlance. 3 *Lev.* 343.

It muſt be pleaded before Imparlance.

F **One** may have a Privilege in the Land of another by Preſcription, although he hath no Title to the Freehold or Soil: *Paſch.* 23 *Car. B. R.* For altho' he now have it by Preſcription, it might ariſe originally by Grant; and whatſoever lies in Grant, may be claimed by Preſcription, ſo that the Preſcription in this Caſe is not unreaſonable.

One may have Privilege in the Land of another.

G **One** that is privileged in this Court ought not thereby to claim his Privilege to have a Trial at the Bar, for to try the Title of Lands which he claims in Remainder: *Trin.* 23 *Car. B. R.* For it is incertain whether the Remainder may fall whilſt he continues a privileged Perſon, and for the preſent he claims no preſent Intereſt in the Lands; nay, though he had a preſent Claim to them, yet he ought not to be ſo privileged, if the Lands in Queſtion be not of a great Value, or elſe the Title will be very difficult to be tried; and in ſuch Caſes, any other Perſon, though not privileged, may have a Trial at the Bar; and Trials for Land ought by the Law to be in the County where the Lands lie.

Privilege may not be claimed to try the Title of Lands in Remainder.

H **A privileged** Perſon ſhall not be allowed his Privilege upon a Motion for it to the Court; but he muſt appear and plead his Privilege; and upon his pleading it, he ſhall be allowed it. *Mich.* 23 *Car. B. R.*

Privilege muſt be pleaded.

It is allowed in the Exchequer upon producing the Red Book.

A **Note**, There is no need to plead the Privilege of the Exchequer; for it ſhall be allowed upon producing the Red Book of the Exchequer, by a Baron of the Exchequer. 1 *Lutw.* 46.

Denied to a Filazer's Clerk.

B **A Filazer's** Clerk did claim to be privileged in this Court, but was denied it: *Mich.* 29 *Car.* For though the Maſter may be privileged, yet the Court takes no Notice of the Servant; for he hath no neceſſary Dependance on the Court.

Privilege of the Lord Mayor of *London*.

C **The** Lord Mayor of the City of *London* is privileged from all Actions during his Mayoralty, in regard of his Office, except it be for Felony or Treaſon, or Actions which concern Freehold; this is, That he may not be hindred in the Government of the City; which being the Metropolis of the Nation, is of higher Concernment in reſpect of the Publick, than any Man's particular Intereſt: *Paſch.* 24 *Car. B. R.* For theſe are Matters of a high Nature, and it much concerns the Publick to have ſpeedy Juſtice to be done in them.

Of a Member of Parliament.

D **A Member** of Parliament is privileged, as well in his Lands and Goods, as in his Perſon: By *Rolle* Chief Juſtice, *Mich.* 24 *Car. B. R.* In the Caſe of the Lord *Mohun*. For being diſturbed in any of them, he is hindered in ſerving of the Commonwealth, which is to be preferred before all private Intereſts whatſoever.

Attorney has no Privilege as Executor.

E **An** Attorney of this Court that is ſued as an Executor, is not to be privileged; for he is ſued in the Right of the Teſtator, and not in his own Right, *Paſch.* 1650. *B. S.* 7 *Maii.* And his perſonal Privilege is not applicable to him in any other Relation, than as he is an Attorney of the Court.

Prayer of Privilege not properly a Plea.

F **The** Prayer of Privilege is not properly a Plea; for a privileged Perſon did anciently demand his Privilege by Writ, but of later Times the Party hath been admitted to his Privilege upon his Prayer to the Court. By *Latch*, Apprentice, 1654. *B. S. Vide ante* Title **Pleas and Pleadings.**

A Clerk of *B. R.* not bound to lay a perſonal Action out of the County where the Court ſits.

G **A Clerk** of this Court is not bound to lay any perſonal Action which he brings againſt another out of the County where this Court doth ſit: *Mich.* 22 *Car. B. R.* But by his Privilege he may lay it here notwithſtanding the Cauſe of his Action did ariſe in another County, provided it be not a local Action; and he is thus privileged in regard of the conſtant Attendance he is tied to give in this Court.

Privilege granted to a Witneſs.

H **In** the Caſe betwixt *Oliver*, Protector, and *Syndercomb*: *Hill.* 1656. The Privilege of the Court was prayed, and granted to protect a Witneſs from being arreſted in coming or going from the Court, who was to give Evidence for the Protector upon an Indictment of High Treaſon preferred againſt *Syndercomb*; *quod Nota.*

A **A Barriſter** who conſtantly attends this Court ought to have the Privilege of being ſued in all tranſitory Actions in *Middleſex*: Becauſe there is his Attendance and Buſineſs during the Continuance of the Term.

Barriſter to be ſued in *Middleſex*.

B **Where** an Attorney of this Court ſues another Perſon, who is not any ways privileged; this Perſon is bound to anſwer the Attorney's Action in this Court without Imparlance, in the ſame Manner as the Attorney is bound to anſwer him; and Reaſon good; for what is Law for the one, ought to be Law for the other.

Action by an Attorney to be anſwered without Imparlance.

C **In** the Caſe of *Robinſon* and *Wright*, it was ruled, That though *Robinſon* was an Alderman of *London*, yet he ought not to be privileged to continue his Action in *London*, where the Cauſe of Action aroſe in another County, and was a perſonal Action.

Not granted to an Alderman of *London*, to continue his Action in that City.

D **One** that hath a Suit depending in this Court, is privileged by the Court from his being arreſted in coming hither from his Houſe or Lodging to follow his Cauſe, and alſo in going back again from the Court directly to his Houſe or Lodging; and if he be arreſted in ſo doing, the Court upon a Motion made to inform them of it, will ſet the Party at Liberty, and puniſh him that arreſted him, if he did know he had a Suit depending here, and came hither to attend it; were it otherwiſe, it might be very miſchievous to the Party.

Privilege of a Perſon who has a Suit depending.

E *Vide Raym.* 101. Where it is ſaid, That if a Man be arreſted in the Face of the Court, the Court has Power to diſcharge him, but not otherwiſe.

A Man arreſted in the Face of the Court.

F **That** Jurors that will have Privilege upon a Charter of Exemption, ought to claim it in proper Perſon, but ſhall not have it in *B. R.* nor in Caſe where the King is Party without expreſs Words. *Id.* 113, 114. 1 *Lev.* 159.

Privilege of Jurors on a Charter of Exemption.

G **The** King's Servants are privileged from Arreſts; for that the King ſhall not be deprived of them without Leave. *Id.* 152.

Of the King's Servants.

H **But** they may be outlawed; for that is for the Advantage of the King. *Ibid.*

May be outlawed.

I **An** Attorney Copyholder is privileged from ſerving as Reeve, and alſo from being a Soldier. *Id.* 180. See 1 *Lev.* 265.

Of Attorney Copyholder.

K **But** a Captain of the King's Guards is not exempt to ſerve the Lord of a Mannor as Reeve. 1 *Lev.* 233.

Of Captain of the King's Guards.

L **The** Wife of an Attorney of this Court, if ſhe be arreſted, ought not to claim the Privilege of this Court, not to put in Bail to the Action, as her Huſband may, if he be arreſted; but her Huſband muſt put in Bail for her, and for want thereof ſhe is to be committed to Priſon: *Trin.* 1650.

Of the Wife of an Attorney.

June 25. *B. S.* For her Huſband is privileged only in regard of his perſonal Attendance upon the Court, and of that Tie which the Court hath upon him in regard of his Relation to the Court, and ſo it is only a perſonal Privilege annexed to his Perſon, and concerns not his Wife.

Attorney abſenting for a Year, forfeits his Privilege.

In the Caſe between *Ridly* and *Car*, *Paſch.* 1656. A
B. S. It was ſaid by *Glyn* Chief Juſtice, and ſo ruled, That if an Attorney of this Court do abſent himſelf for a Year from the Court, and gives no Attendance, he doth by the new Rules forfeit his Privilege.

Money attached in *London* in the Hands of an Attorney, he ſhall not have his Privilege.

Also the Writ of Privilege implies as much.

Money was attached in *London* in the Hands of B
an Attorney of this Court; he ſhall not have his Writ of Privilege in this Caſe, becauſe the Plaintiff cannot follow his Attachment againſt him in the King's Bench, but only in the Court of *London*; and if this Court ſhould ſtay Proceedings in the Court of *London*, there would be a Failure of Juſtice. Alſo the very Writ of Privilege itſelf doth imply as much; for after the ſetting forth of the Privilege of this Court, and the ſuing of the Defendant in another Court; it is thus, *Quod ad omnem ulteriorem proſecution' ſuperinde verſus præd'*, the Attorney *ſuperſed. periculo incumbente, dicentes partibus prædict' quod ad Curiam noſtram coram nobis accedant ad juſtitiam ibidem in ea parte conſecuturam ſi ſibi viderint expedire*; ſo that a foreign Attachment being a Matter not conuſable in the Courts of *Weſtminſter-hall*, there is no Reaſon that the Plaintiff ſhould be ſtopped from proceeding in that Court where by Law he may proceed.

All Proceſs againſt an Embaſſador, publick Miniſter or their domeſtick Servants, ſhall be void.
7 **Annæ.**

An Act was made 7 *Annæ Reginæ*, *For preſerving* C
the Privileges of Ambaſſadors and other publick Miniſters of foreign Princes and States; whereby it is enacted, That all Writs and Proceſs that ſhall at any Time be ſued or proſecuted, whereby the Perſon of any Embaſſador or other publick Miniſter of any Foreign Prince or State, or the Domeſtick Servant of any ſuch Embaſſador or Miniſter, may be arreſted or impriſoned, or his Goods diſtrained, ſeized or attached, ſhall be adjudged to be void.

That all Perſons and Attorneys, Solicitors and Officers, who ſhall ſue out ſuch Writs.

How to be puniſhed.

That ſuch Perſon who ſhall ſue forth ſuch Writ, D
and all Attorneys and Solicitors in ſuch Caſe, and all Officers executing thereof, upon Conviction by the Confeſſion of the Party, or the Oath of one or more credible Witneſs or Witneſſes, before the Lord Chancellor, Lord Keeper, the two Chief Juſtices, or any two of them, ſhall be deemed Violaters of the Law of Nations, and ſhall ſuffer ſuch Pains, Penalties and corporal Puniſhments, as they or any two of them ſhall impoſe or inflict.

No Bankrupt, who is Servant to an Embaſſador, ſhall have the Benefit of this Act.

No Perſon within the Deſcription of the Statute E
of Bankrupts, who puts himſelf in the Service of any Embaſſador, *&c.* ſhall have the Privilege of this Act.

A **Nor** no Perſon ſhall be proſecuted upon this Act, unleſs the Name of ſuch Servant be entered in the Office of one of the Principal Secretaries of State, and tranſmitted to the Sheriffs of *London* or *Middleſex*, and to be hung up in ſome publick Place in their Office, which all Perſons may reſort and take Copies of without Fee: This is declared to be a publick Act.

The Servants to be regiſtred with a Secretary of State, and tranſmitted to the Sheriffs.

This is a publick Act.

B **There** is an Act made 1. *Jac.* 1. *cap.* 13. intituled, *An Act for new Execution to be ſued againſt any which ſhall hereafter be delivered out of Execution by Privilege of Parliament, and for the Diſcharge of thoſe out of whoſe Cuſtody ſuch Perſon ſhall be taken.*

A new Execution ſhall be ſued out againſt him diſcharged by Privilege of Parliament.

1 Jac. 1. cap. 13.

And the Priſon-keeper ſaved harmleſs.

C **The** Clergy coming to the Convocation, and their Servants, ſhall have the ſame Privileges from Arreſts, as the Members which come to the Parliament.

The Convocation Clergy, and their Servants, ſhall have the ſame Privileges as Members of Parliament have: 8 H. 6. cap. 1.

D **Privilege** for Scholars in the Univerſity of *Oxon*, where to be allowed, and where not. *Chanc. Rep.* 237, 258.

Where Univerſity Privileges are to be allowed, and where not.

E **Privilege** ſhall not be allowed to a Man, where his Wife is joined in the Action with him. *Noy* 68.

No Privilege where the Wife is joined in the Action.

F **An** Act of Parliament was made, 12 & 13 *W.* 3. *cap.* 3. Intituled, *An Act for Preventing any Inconveniencies that may happen by Privilege of Parliament.* Which ſee in Title **Parliament.**

An Act for preventing Inconveniencies by Privilege of Parliament.

12 & 13 W. 3. cap. 3.

G **Alſo**, 2 *Annæ*, it is by another Act enacted, That no Peer, or Member of the Houſe of Commons, ſhall have any Privilege of Parliament in any Suit for any Forfeiture, Miſdemeanor, or Breach of Truſt, in any Part of her Majeſty's Revenue, or other Office or Place of Publick Truſt; but the ſame Proceſs and Proceedings ſhall be againſt them as are in the Act in Title **Parliament.**

No Peer, or Commoner, ſhall be privileged againſt the King.

2 & 3 Ann. cap. 18.

H **By** an Act made 8 & 9 *W.* 3. *cap.* 26. Intituled, *An Act for the more effectual Relief of Creditors in Caſe of Eſcapes, and Preventing of Abuſes in Priſons, and pretended Privilege Places*; the pretended Privilege of *White-Fryars*, *Savoy*, *Saliſbury-Court*, *Ram-Alley*, *Mitre-Court*, *Fuller's-Rents*, *Baldwin's-Gardens*, *Montague-Cloſe*, the *Minories*, *Mint*, *Clink*, or *Deadman's-Place*, are taken away, and made ſubject to all Arreſts, &c. See Title **Priſon and Priſoners.**

The pretended Privileges of *White-Friars*, *Savoy*, &c. taken away.

8 & 9 W. 3. cap. 26.

Vide the Act of 9 *Geo. cap.* 28. for taking away the pretended Privilege of the *Mint*, and the Act of 11 *Geo. cap.* 22. for that of *Wapping*.

Where an Attorney of the Common Pleas muſt be ſued by Bill.

In an Action *Qui tam*, an Attorney of the Common Pleas hath Privilege to be ſued by Bill. 3 *Lev.* 398. A

How far a Member of Parliament is privileged.

12 & 13 W. 3. cap. 3.

A Member of Parliament is privileged, as well in his Lands and Goods as in his Perſon: For being diſturbed in any of them, he is hindered in ſerving of the Kingdom, which is to be preferred before all private Intereſt whatſoever: But now by the Statute of 12 & 13 *W.* 3. *cap.* 3. All Parliament Privileges are particularly directed. B

How an Attorney of *C. B.* muſt plead his Privilege.

An Attorney of the Court of Common Pleas pleads his Privilege, but doth not ſay, *prout patet per Recordum*, or that the Court of *C. B.* was held at *Weſtminſter*; but notwithſtanding held good: Becauſe they could ſend a Writ to the Chief Juſtice of the Common Bench, to certify to them, Whether he was an Attorney upon Record, or no: And as to the want of the Averment, That the Court was held at *Weſtminſter*, they ſaid it was as certainly deſcribed as poſſible; if not, they would intend it at *Weſtminſter*. 4 *Annæ*, *B. R.* C

Where the Privilege of *Cuſtos Brevium* pleaded in *C. B.* is a good Plea, and where not.

Privilege of the *Cuſtos Brevium* of the King's Bench, pleaded in the Common Pleas after Bail, and held good; but not after a general Imparlance. 3 *Lev.* 343. D

Serjeant at Law is ſuable in any Court in *Weſtminſter-Hall*.

A Serjeant at Law is ſuable in any Court in *Weſtminſter-Hall*, becauſe he hath no Privilege. 2 *Lev.* 129. E

What the Privilege of Peers in Parliament is.

Privilege of Peers in Parliament, is from the *Teſte* of the Writ; and upon every Seſſion and Prorogation, twenty Days before, and twenty Days after every Seſſion. *Ibid.* F

An Attorney ſhall have his Privilege, tho' he doth not practiſe.

Although an Attorney doth not practiſe, yet he ſhall have his Privilege ſo long as he continues an Attorney upon Record. *Lutw.* 1667. G

From what Offices he ſhall be excuſed, and from what not.

An Attorney ſhall have his Writ of Privilege to excuſe him from all Offices, which require his perſonal Attendance; as Churchwarden, Conſtable, *&c.* but he ſhall not be excuſed from Offices which may be executed by Deputy. *March* 30. *pl.* 65. To diſcharge him from ſerving Conſtable. *Cro. Car.* 389. *pl.* 22. H

Money cannot be attach'd in his Hands, by Foreign Attachment.

A Writ of Privilege was granted by the Court of Common Pleas for an Attorney of that Court, in whoſe Hands Money was attach'd in *London*, upon a Foreign Attachment. 2 *Leon.* Caſe 190. I

Of a Place.

Privilege of a Place is not allowed where the King is always abſent. 3 *Salk.* 92, 284. K

After Imparlance.

After a full Defence and ſpecial Imparlance, it has been a Queſtion whether the Party may plead Privilege. 3 *Salk.* 271. L

A **Where** Privilege of the Court at *Weſtminſter-Hall*, and of Officers and Attorneys attending them is well pleaded, and where not. 2 *Salk.* 543, 544. 3 *Salk.* 283. *Carthew* 363.

Pleading Privilege.

B **A Perſon** privileged by Record, pleading it and producing his Writ of Privilege, it cannot be traverſed; but if one pleads Privilege as a Clerk or Servant to another Perſon privileged, this may be traverſed and tried *per pais. Skin.* 521, 582. 2 *Salk.* 545.

What cannot be traverſed.

C **An** Attorney of *C. B.* ſhall have his Privilege in an Action of Debt *qui tam, &c.* but not in an Information *qui tam, &c.* for Debt *qui tam, &c.* is merely the Suit of the Party. *Skin.* 549. *Comberb.* 319.

Privilege on a *Qui tam, &c.*

D **Privilege** of Parliament does not extend to Breaches of the Peace. *Comberb.* 49.

Of Parliament.

E **Attorneys** Clerks, *&c.* are not to be privileged, nor Attorneys themſelves when ſued jointly with other Perſons. *Comberb.* 6. 2 *Salk.* 545.

Attorneys.

F *Quære*, If one who has left the Univerſity ſhall have the Privilege thereof for what he did as Proctor there. *Comberb.* 179.

Univerſity.

G **Privilege** of an Attorney when Plaintiff. *Carthew* 126.

H **A Philazer** of *B. R.* arreſted *per breve* was diſcharged on Common Bail, for he ought to be ſued by Bill. 2 *Salk.* 544.

Filazer of *B. R.*

I **But** an Attorney of *C. B.* ſued by Bill in *B. R.* muſt plead his Privilege, and can't be diſcharged on Motion. *Ibid.*

Attorney.

K **A Plea** of Privilege as Attorney of *C. B.* need not ſhew the Writ under Seal, nor a *Venue*, nor where *C. B.* ſits. *Ibid.* 545.

Sub pede ſigilli.

L **A Bill** can't be filed againſt a privileg'd Perſon in the Vacation, which begins as ſoon as the Court riſes. *Ibid.*

When a Bill to be filed.

M **On** a voluntary coming in to confeſs an Indictment, *&c.* no Privilege *eundo & redeundo* allowed. *Ibid.*

Eundo & redeundo.

Privy-Counſellor, See **Felony.**

Probate.

See { Adminiſtrators.
Deviſe.
Executors.
Wills.

Probate, what.

Probate is the proving of a Will in the Spiritual Court; and thereupon Letters Teſtamentary are granted under the Seal of the Court, which enables the Executor to ſue, but without them he cannot. A

Fees for Probate of Wills.
21 H. 8. *cap.* 5.

What Fees ought to be taken for the Probate of Wills, and the Penalty of taking more than is allowed by the Statute of 21 *H.* 8. *cap.* 5. B

Where Probate of Wills, to be for Wages for Perſons dying in his Majeſty's Docks.

Where ſhall be the Probate of Wills of Perſons dying, to whom Money for Wages or Work done in his Majeſty's Docks and Yards ſhall be due. See Title **Wills.** C

Probate of a Will good Evidence on an Iſſue, whether Executor or no.

Upon an Iſſue, whether the Deceaſed made an Executor or no, the Probate of the Will was adjudged to be good Proof. 9 *W. B. R.* D

An Executor arreſts before Probate, the Probate afterwards makes the Arreſt good.

An Executor arreſts a Man before Probate of the Will; Probate after the Arreſt makes the Arreſt good between the Parties, Plaintiff and Defendant: But it ſhall not prejudice a third Perſon, and make the Payment to him naught, which had been good, if it had not been for this Arreſt. 3 *Lev.* 57, 58. E

What Evidence may be given upon a Probate of a Will, and what not.

Where a Probate of a Will is produced in Evidence, the Defendant cannot ſay, That it was a forged Will, or that the Teſtator was *Non Compos Mentis:* But Evidence may be given, that the Seal was forged, and that there were *Bona Notabilia.* 1 *Lev.* 239. F

An Executor may releaſe, but not ſue before Probate.

An Executor may releaſe before Probate, but cannot ſue before it: Becauſe he muſt bring it into Court. 9 *Rep.* 38. *a.* G

A A Will for Lands need not to be proved in the Spiritual Court: And a Will for Lands and Goods, how to be proved. See Title Prohibition.

A Will for Lands not to be proved.
For Goods and Lands, how.

B The Probate of Wills for perſonal Things belongs only and properly to the Spiritual Court.

Where muſt be the Probate of Wills for perſonal Things.

C That the Probate of Wills concerning Lands only, and no Goods, ought not to be proved in the Spiritual Court by Compulſion; though they may be proved there.

Where for Lands may be proved.

D Where there are Lands and Goods in one intire Will, it is reaſonable to prove it intirely in the Spiritual Court: And the Probate for Lands will not prejudice the Heir, for it ſhall not be any Evidence at the Common Law. *Cro. Car.* 395. *pl.* 7. 396. See *Cro. Jac.* 346. *pl.* 15. 337.

Where, when Lands and Goods are in one intire Will.

E A Copy of a Will examined in the Prerogative Office, where Lands are deviſed, cannot be given in Evidence upon a Trial, but it ought to be the Original Will itſelf, if it be in the Office: But where the Original cannot be found, there the Regiſter-Book may be admitted.

How a Will for Lands may be proved upon a Trial.

F An Executor may maintain Trover before Probate. *Carthew* 154.

Action before Probate.

G Where Caution is required before Probate. *Ibid.* 458.

Caution.

Procedendo.

See Bail.

H Procedendo is a Writ which lies where an Action is removed out of an Inferior Court to a Superior Court, by Habeas Corpus, or Certiorari; and if the Party who ſues out the Habeas Corpus, or Certiorari, doth not put in good Bail in Time, (where good Bail is required) then there goes this Writ to the Inferior Court to proceed Non Obſtante the Habeas Corpus, or Certiorari.

Procedendo, what.

Where

If *Habeas Corpus* be to remove a Cauſe actionable in *London*, and not at Common-Law, *Procedendo* will be granted to try it in *London*.

Where a Cauſe by the Cuſtom of *London* is actionable, and will not bear an Action at the Common Law, if upon a *Habeas Corpus*, or *Certiorari*, brought to remove ſuch Cauſe to this Court, it doth ſo appear to the Court; this Court will grant a *Procedendo* to authorize the Court of *London* to proceed in the Matter, *Brevi de Habeas Corpus eis prius direct' & deliberat' ad contrar' inde in aliquo non obſtante*; otherwiſe the Party that brought the Action would be without Remedy: *Hill.* 22 *Car. B. R.* Which the Law leaves no Man without, much leſs will hinder Juſtice to be done. A

Granted for calling one *Whore* in *London*.

On a *Habeas Corpus* a *Procedendo* granted for calling a Woman *Whore* in *London*, by three Juſtices: *Raym.* 81. B

Not granted after Bail filed, or Iſſue joined.

After the Defendant hath filed Bail in this Court, a *Procedendo* ought not to be granted, much leſs after Iſſue is joined in the Cauſe: *Paſch.* 23 *Car. B. R.* For by accepting of the Bail the Plaintiff hath admitted of the Juriſdiction of the Court, and it is then too late to move for a *Procedendo*, much leſs after Iſſue joined, when the Cauſe is ready for a Trial. C

It need not agree in Form with *Habeas Corpus*.

It is not neceſſary that a *Procedendo* do agree in Form with the *Habeas Corpus*, by which the Cauſe was removed into this Court; but it is ſufficient if it do agree in Matter and Subſtance with it: *Trin.* 24 *Car. B. R.* That it may appear that it is to proceed in the ſame Cauſe that was removed. D

If the Defendant's Bail be diſallowed by the Court, a *Procedendo* will be granted.

If the Defendant hath put in Bail in this Court, upon the Removal of the Cauſe hither by *Certiorari*, or *Habeas Corpus cum Cauſa*, if afterwards the Bail be diſallowed by the Court, if the Defendant ſhall upon a Rule given for that Purpoſe, and Notice thereof to him given, refuſe to put in better Bail, ſuch as the Court ſhall approve of, a *Procedendo* may be granted to the Plaintiff, to remove the Cauſe back again to try it where the Action was firſt laid: *Mich.* 24 *Car. B. R.* For diſallowing of the Bail, makes the Defendant to be in the ſame Condition as if he had put in no Bail; and until the Bail put in be filed, this Court is not poſſeſſed of the Cauſe ſo as to proceed in it. E

How a *Procedendo* is to be ſued out, and when.

If a *Certiorari*, *Habeas Corpus*, *&c.* to remove a Cauſe, be returned before a Judge, the Judge will give you a Rule thereupon to put in good Bail by ſuch a Day; which if the Defendant upon the ſerving of his Attorney with a Copy of the Rule, doth not do, then the Judge will ſign a Warrant for a *Procedendo*. Alſo if the Bail ſhall be put in at the Time, and they do not prove good Bail, the Judge will grant a Rule for better Bail to be put in by ſuch a Day, or elſe to juſtify the Bail already put in, which if the Defendant F dant doth not do, the Judge will then alſo ſign a Warrant for a *Procedendo*.

A A *Procedendo* upon an Aid-Prayer in Dower, and a Judgment to recover Seiſin, and a Return of the Writ of Seiſin. 4 *Leon.* Caſe 223.

A *Procedendo* upon an Aid-Prayer in Dower.

Proceſs and Proceedings in Law.

See Appearance. Declaration.
Arreſt. Latitat.
Bail. Reddidit ſe.

B ALL legal Proceedings ought to take Commencement by original Writ or Indictment, or by Information: 21 *Car. B. R.* or by Bill of *Middleſex* or *Latitat*, which is the original Proceſs of this Court, and is in the Nature of an Original to cauſe Appearance.

How legal Proceedings ought to take Commencement.

C If a *Cepi Corpus* be returned in one Term, the Defendant ought to plead the next Term after the Return, ſo that the Plaintiff may go to a Trial the ſame Term; and ſo it is, if the Defendant be brought into Court by a *Habeas Corpus*, or an *Alias*, or *Pluries Habeas Corpus*: *Mich.* 22 *Car. B. R.* Elſe there would be Delay in the Proceedings, which the Court will not permit.

Defendant muſt plead the Term after the *Cepi Corpus* is returned.

D If one be arreſted upon a *Latitat* in the King's Bench, if the Cauſe of Action requires Special Bail he muſt put them in, or be committed to the Marſhal; but if he puts in Bail which are accepted by the Plaintiff or the Court, then he is delivered out of Cuſtody to his Bail, *viz. traditur in Ballium*; and the Bail may if they think the Priſoner will fly, reſeize him, and bring him before a Judge, and render him in Diſcharge of his Bail; but it is otherwiſe when one is let to Bail by Mainpriſe, Mainpriſe being only a Surety: And there is a great Difference between Bail and Mainpriſe; for he that is mainpriſed, is always ſaid to be at large, and go at

How Bail muſt be put in *in B. R.*

Differences between Bail and Mainpriſe.

at his own Liberty till the Day of Appearance; But is otherwiſe where a Man is let to Bail by the Court, for there he is always ſuppoſed to be in the Ward and Cuſtody of his Bail, who may render him when they pleaſe; but a Surety cannot do ſo. *Vide Cowel's Interp. verb. Mainpriſe.*

If Plaintiff be nonſuit, he cannot proceed on his old Declaration.

After the Plaintiff is nonſuit, he may begin his Action again, but cannot proceed upon his old Declaration: *Mich.* 22 *Car. B. R.* For by the Nonſuit the Cauſe as to that Action is determined, and the Parties have no Day in Court; but he may put in the ſame Declaration again if he pleaſe, and proceed thereupon as upon a new Declaration; but the Court, if they ſee Cauſe, may ſet aſide either a Nonſuit or Verdict, and order a new Trial either with or without Coſts. A

Where the Court will order a Repleader.

Where the Iſſue is not well joined after a Verdict, there may be by order of the Court a Repleader. *Mich.* [illegible] *Car. B. R.* B

Where the Court will ſuperſede an Execution that iſſued erroneouſly.

Where the Defendant brings a Writ of Error to reverſe a Judgment given againſt him, and hath a *Superſedeas* to ſtay Execution upon the Judgment directed to the Sheriff of that County where the Execution is to be done; and yet he is taken by the Sheriff by Virtue of an Execution taken out upon this Judgment before the Writ of Error brought, but not executed until after the Writ allowed and *Superſedeas* ſued out: Now upon moving of the Court, they will grant him a Writ of *Superſedeas* to ſuperſede this Execution, *Quia emanavit erronice. Mich.* 22 *Car. B. R. Vide* **Error.** C

Bills of *Middleſex* iſſue to the Sheriffs of *Middleſex*, and *Latitats* to thoſe of all other Counties.

Bills of *Middleſex* are directed to the Sheriffs of *Middleſex*, and *Latitats* (which are Recitals of the Bills of *Middleſex*, and *Teſtatums* upon it, *viz.* That the Defendant *Latitat & diſcurrit* in another County) iſſue out to Sheriffs of all other Counties in *England* wherein Proceſs of *Latitat* doth lie. D

Conſtable may execute a Warrant for good Behaviour on a Sunday.

A Warrant directed to a Conſtable to take *A.* to find Sureties for his good Behaviour, may be executed on a Sunday notwithſtanding the new Statute. *Raym.* 250, 251. E

Ven. fac. the firſt Proceſs in all Indictments under Felony.

In all Indictments for Treſpaſs and under Felony, a *Venire facias* is the firſt Proceſs. *Ibid.* 375. F

Inferior Courts muſt ſet forth the Manner of Continuances.

Inferior Courts ought to ſet forth the Manner of their Continuances upon their Proceſſes, and not to expreſs them generally. *Trin.* 24 *Car. B. R.* G

And their Proceedings muſt be formal, as in the Courts at *Weſtminſter.*

The Proceedings in inferior Courts ought to be as regular and formal as the Proceedings are in the Courts at *Weſtminſter*, and not to be entered only in ſhort Notes: *Paſch.* 24 *Car. B. R. Paſch.* 1648. *B. S.* For Order, Forms and Clerkſhip ought as well to be obſerved in inferior Courts of Record, as they are in ſuperior; and if the Entries, Proceedings and Judgments are not carefully and legally done, but are erroneous, this Court will reverſe them. H

A **If** one be arreſted by Proceſs of this Court, and be thereupon in Cuſtody, and the Plaintiff do not declare againſt him in two Terms after, the Defendant may by the Rules of the Court be diſcharged upon Common Bail: *Trin.* 24 *Car.* B. R. For the Court will preſume the Cauſe of Action is not very great, becauſe it is ſo long before he declares; and they are ſo tender of Liberty, that they will not keep the Defendant in Priſon to ſatisfy the Plaintiff's unreaſonable Humour.

If Plaintiff do not declare in two Terms, Defendant may be diſcharged on common Bail.

B **The** Continuances in the Proceſs of this Court, are not uſually entered until the Judgment given in the Cauſe proceeded in be entered: *Mich.* 1649. *B. S.* For till then is not the Record made perfect.

When the Continuances in *B. R.* are entered.

C **An** Appearance will help a Miſcontinuance of Proceſs, but not a Diſcontinuance of the Proceſs: 9 *Nov.* 1650. *B. S.* For by the Diſcontinuance of the Proceſs the Cauſe is out of the Court, and cannot be recontinued by the Conſent of the Parties; but by the Miſcontinuance it is not ſo.

Appearance helps a Miſcontinuance, but not a Diſcontinuance.

D **The** bringing of a Writ of Error is a Continuance of the Action: 10 *Feb.* 1650. *B. S. Hill.* For the Action is not determined by the Judgment, if a Writ of Error be brought, but is ſtill depending; for the Judgment (it may be) may be reverſed, and ſo the Action remains as if Judgment were not yet given; becauſe the Party continues his Suit to overthrow the Judgment.

Writ of Error is a Continuance.

E **If** a Cauſe be ordered to be ſpoken to in Court, and to be put into the Paper of Cauſes for a certain Day, and it be not put into the Paper of the Cauſes at the Day appointed by the Court, the Court will not proceed therein, but order the ſame to ſtand for the next Paper-day: *Trin.* 1650. *B. S.* For the Judges not ſeeing the Cauſe ſtand in the Paper, do not bring their Books to the Court, nor will conſider of the Cauſe before it comes on, as they do in thoſe Cauſes which are in the Paper.

If a Cauſe ordered to be ſpoken to, be not put in the Paper of Cauſes, the Court will not proceed in it.

F **Upon** a Verdict or Demurrer (ſometimes) the Continuances in the Cauſe are not entered until after a Writ of Error brought: *Paſch.* 1652. *B. S.* For it is Time enough then to enter them.

Upon Verdict or Demurrer, Continuances are entered after Error brought.

G **Miſcontinuance** of Proceſs is where one Proceſs is uſed for another Proceſs, *viz.* a wrong Proceſs inſtead of a right: *Trin.* 1652. *B. S.* But a Diſcontinuance of Proceſs is when there wants ſome Proceſs to continue the Cauſe in Court from one Day to another.

What is a Miſcontinuance of Proceſs, and what a Diſcontinuance.

H **Where** an *Indebitatus aſſumpſit* or *Quantum meruit* is brought, the Defendant before Plea pleaded, may move the Court, that upon his bringing in of ſo much Money into Court; *viz.* what the Court thinks fit; (which Money muſt be paid into Court,

Where the Defendant may move to bring Money into Court upon an *Indebitatus aſſumpſit.*

And how upon a Bond.

4 & 5 Ann.

and a Receipt taken for it, and produced to the Clerk of the Rules, before the Rule can be drawn up) the Plaintiff ſhall proceed for the reſt at his Peril. And if the Plaintiff refuſeth to accept the Money brought into Court, but goes on to Trial; then, if at the Trial he can prove no more due than the Money brought into Court, upon producing of the Rule, the Court will order the Plaintiff to have the Money brought into Court, and the Jury to find a Verdict for the Defendant: But if it ſhall appear that there was more due, then the Jury muſt give a Verdict for the Plaintiff, and the Court will order the Money paid into Court to be repaid to the Defendant.

For Payment of Money into Court.

4 & 5 Ann.

But now upon the Statute of 4 & 5 *Anne*, the A
Defendant may pay the Principal, Intereſt and Charges upon a Bond, and the Court will ſtay Proceedings.

Where Proceſs is void, and where only voidable.

When Proceſs is awarded out of a Court which B
hath not Juriſdiction of the principal Cauſe, there it is *coram non judice*, and void; and if the Sheriff executes it, he is a Treſpaſſer; but otherwiſe if the Court hath Juriſdiction of the principal Cauſe; for there, if the Proceſs be miſconceived, it is only erroneous. 2 *Leon.* Caſe 112. *fol.* 89.

Lands in *Ireland*.

Where Proceſs of this Court will not affect the C
Lands in *Ireland*, ſo as to ſequeſter them from a Contempt. *Mod. Caſes in Law and Equity* 124.

Proceſs againſt a Company.

The Old *African* Company indebted by Bond, D
convey their Effects to the New *African* Company, for Payment of the Debts due by the Old Company; a Bill brought againſt the New *African* Company only to ſubject their Effects to this Debt, and ſaid in this Caſe that Proceſs againſt a Company is by *Diſtringas*, not *Subpœna*; and if they have no Effects there is no way to compel them to appear. *Skin.* 85.

Proceſs of the Coroner.

A *Scire facias* in the Nature of a *Quo Warranto* E
brought againſt the Sheriff amongſt other Parties, Proceſs ought to go to the Coroner for all. *Ibid.* 91.

Proclamation.

Proclamation.

See {Copyhold.
Niſi Prius.

A **Proclamation is made by the Reeve at a Court-Baron, for any Perſon to come in and claim a vacant Copyhold, of which a Tenant ſince the laſt Court died ſeiſed.**

Proclamation, what.

B **The** Lord may, without Cuſtom, ſeize the Copyhold, until the Heir comes in to be admitted upon Proclamation made: But he cannot ſeize for a Forfeiture, without a Cuſtom for it. 1 *Lev.* 63.

Where a Lord may ſeize a Copyhold without Cuſtom.

C *Note,* It is beſt to nominate in the Proclamation all the Lands, as they are named in the Copy, and not generally to be admitted to all his Anceſtor's Lands. *Ibid.*

How to make Proclamation for the Heir to be admitted to Copyhold Lands.

D **There** is alſo a Writ of Proclamation which iſſues out upon a Writ of Exigent, in order to an Outlawry.

A Proclamation upon an Exigent.

E **At** the later End of the Aſſizes, there uſed to be Proclamation made, that no more Records of *Niſi Prius* be put in to be tried at that Aſſizes after ſuch Proclamation made, and that they ſhall not be received after; and all Perſons that are to attend their Trials, if the Records of *Niſi Prius* to be tried be not then put in, may depart, and are bound to give no longer Attendance at that Aſſizes: *Paſch.* 1652. *B. S.* This is done when the Court perceives that there are as many Records put in as can conveniently be tried at that Aſſizes, that the People concerned might not attend upon their Cauſes in vain.

Proclamation made at the later End of the Aſſizes.

F **The** King may make a Proclamation to his Subjects, *Quoad terrorem Populi,* to put them in fear of his Diſpleaſure; but not upon any other certain Pain; as Forfeiture of the Lands or Goods, or to undergo the Penalty of

What the King may do by his Proclamation.

of a Fine or Impriſonment: For no Proclamation can make a Law, but it may confirm and ratify an antient Law, but not change it. *Daliſ.* 20. *pl.* 10.

How the King's Proclamation muſt be pleaded.

A How a Proclamation by the King muſt be pleaded. *Cro. Car.* 180. *pl.* 5, 181.

Profert in Curia.

See Declaration. Demurrer. Indenture. Monſtrans. Oyer. Pleas.

Profert in Curia, what.

B Profert in Curia is, in Caſe where the Plaintiff declares upon a Deed, or the Defendant pleads a Deed, he muſt do it with a Profert in Curia, to the End that the other Party may at his own Charges have a Copy of it; and until he hath, at his Requeſt and Charges, gotten a Copy of the Deed, he is not bound to anſwer it.

Upon Oath that the Indenture is loſt, the Court will make the Plaintiff produce his Counterpart, or grant an Imparlance.

C Where a Man is to plead by Force of an Indenture, which he will ſwear is loſt, the Court will compell the Plaintiff to produce his Counterpart, that the Defendant may plead it; or otherwiſe they will grant an Imparlance. *Cro. Jac.* 429. *pl* 5.

So alſo if he will ſwear, that he never had a Counterpart.

D So alſo it is, if he will ſwear that he never had any Counterpart. *Cro. Jac*, 429.

Party or Privy, or he who juſtifies under them, muſt *Profert in Curia.*

E When he who is Party or Privy in Eſtate or Intereſt, or he who juſtifies in the Right of him who is Party or Privy, pleads a Deed, although the Party privy claims but Part of the Original Eſtate, yet he muſt ſhew the Original Deed. 10 *Rep.* 92. *a.* 93. *b.*

A Stranger to a Deed may plead without a *Profert in Curia.*

F Where a Man is a Stranger to a Deed, and claims nothing in it, nor doth any Thing in the Right of the Grantee, as Bailiff or Servant; there he may plead the Patent or Deed, without a *Profert in Curia.* 10 *Rep.* 93. *b.*

An

A **An** Aſſignee of Commiſſioners of Bankrupcy need not ſhew the Bond; becauſe he comes in by Act of Law, and hath no Means to get it. *Cro. Car.* 209. *pl.* 5.

Aſſignees of Commiſſioners of Bankrupcy may ſue a Bond, without a *Profert*, and why.

B **So** alſo Tenant by Statute, or Tenant in Dower, ſhall have Advantage of a Rent-Charge, without ſhewing the Deed. *Ibid.*

So alſo may Tenant by Statute or Dower, have Advantage of a Rent-Charge, without ſhewing of the Deed.

C **The** Court, in Caſe of a Fire, where the Evidences are burnt, may upon the General Iſſue, ſuffer the Party to give the Special Matter in Evidence. 10 *Rep.* 92. *b.*

Special Matter may be given in Evidence, in Caſe of a Fire.

D **No** Advantage or Exceptions ſhall be taken for want of a *Profert in Curia*; but the Court ſhall give Judgment according to the very Right of the Cauſe, without regarding any ſuch Omiſſion and Defect, except the ſame be ſpecially and particularly ſet down, and ſhewn for Cauſe of Demurrer. 4 & 5 *Annæ, cap.* .

No Advantage to be taken for want of a *Profert in Curia*, unleſs ſpecially ſhewn.

4 & 5 **Annæ.**

E **A Man** may claim under a Deed for Uſes, without ſhewing of it.

A Man need not ſhew a Deed of Uſes; and why.

F 1. **Becauſe** the Deed doth not belong to him (though he claims by it) but to the Covenantees, and he hath no Means to obtain it.

2. **Becauſe** it is an Eſtate executed by the Statute of Uſes, ſo as the Party is in by Law; as Tenant in Dower, Tenant by Statute, &c. which have a Rent-Charge extended, and need not ſhew the Deed. *Cro. Car.* 441. *pl.* 12, 442.

G **In** Things executed, or Eſtates determined, there need not be any *Profert in Curia.* 3 *Lev.* 204, 205.

Where there is no need of a *Profert.*

H **A Condition** not to aſſign without Licence, the Plaintiff pleads a Licence of the Leſſor, without a *Profert in Curia*; and upon a Demurrer adjudged, That the Plaintiff not claiming any Intereſt in the Houſe by the Deed of Licence; but that the Licence is only collateral, and pleaded to excuſe the Forfeiture of the Leaſe, and is not like a Releaſe or Confirmation; (for they transfer the Right) therefore it ought not to be ſhewn in Court. 6 *Rep.* 38. *a.*

Licence to aſſign a Leaſe, pleaded without a *Profert.*

Releaſe or Confirmation cannot.

I **When** any Deed is ſhewn in Court, the Deed in Judgment of Law remains in Court all the Term wherein it is ſhewn; and if it be not denied, then at the End of the Term it is delivered to the Party whoſe it is. 5 *Rep.* 74, 75.

Upon a *Profert in Curia*, the Deed muſt remain in Court all the Term.

K **Although** a Deed be inrolled in Court, you cannot plead it in the ſame Court, without a *Profert* of the Deed: But if a Deed be pleaded and brought into Court, and it be denied, it ſhall remain in Court for ever; for if it be found *Non eſt Factum*, it ſhall be damned. 5 *Rep.* 47. *b.*

If it be denied, and found not his Deed, it muſt be damned.

Where a Deed is entered of Record, it is Parcel of the Plea.

Where a Deed is entered of Record, it is Parcel of the Plea; and if it appears thereby, that the Plaintiff hath no Cauſe of Action, he cannot have Judgment. 5 *Mod.* 5. See 1 *Saund.* 316.

Where a *Profert hic in Curia* is neceſſary, and where not, of Letters Teſtamentary. *Carth.* 315.

Prohibition.

See
Conſultation.
Courts, &c.
Spiritual Court.
Tithes.

A Prohibition, what.

Prohibition is a Writ which lies to prohibit the Spiritual or Admiralty Courts, and other Inferior Courts, from medling with any Thing out of their Jurisdictions, or of which they have not any Conuſance, and ſhall be directed as well to the Parties as the Judge; and if it appears afterwards, that the Matter is determinable in the Spiritual Court, then there ſhall go out a Writ of Conſultation. A

Not granted the laſt Day of the Term.

A Prohibition will not be granted upon Motion made the laſt Day of the Term; but the Court will ſometimes make a Rule to ſtay Proceedings untill the next Term. B

A Prohibition cannot be granted on an uncertain Suggeſtion.

In a Prohibition prayed to be directed to the Court of Admiralty to ſtay their Proceedings, upon a Suggeſtion that they did hold Plea there, upon a Promiſe which was made *infra corpus comitatus*, and ſo not triable there, but at the Common Law: It was ſaid by the Court, That the Surmiſe muſt be abſolute, that the Promiſe was made *infra corpus comitatus*; and not, that if there was any Promiſe made, it was made *infra corpus comitatus*, for this is uncertain; for it appears not thereby whether there were any ſuch Promiſe made or no, and upon an uncertain Suggeſtion no Prohibition can be granted; for no Iſſue can be taken upon it, tho' it ſhould be falſe. *Hill.* 21 *Car. B. R.* C

A **A Prohibition** was granted to the Admiralty, on Suggeſtion that they had cauſed a Ship to be arreſted on the Land within the Body of the County, *&c. Raym.* 480, 596.

To the Admiralty for cauſing a Ship to be arreſted *infra Corp. Com.*

B **This** Court may by the Common Law grant a Prohibition to the Court of Admiralty to ſtay their Proceedings, if they hold Plea of any Matter, which the Juriſdiction of that Court doth not extend unto: *Mich.* 22 *Car. B. R.* For this Court is to regulate all other Courts in their Juriſdictions, and not to ſuffer them to uſurp Authority where they have none.

It lies to the Admiralty, if they hold Plea of Matters out of their Juriſdiction.

C **That** no Prohibition lies to the Admiralty for ſuing a Recognizance there taken by way of Stipulation, againſt one that was Surety in the Nature of a Bail. *Raym.* 78.

To the Admiralty for ſuing a Recognizance in Nature of Bail.

D **A Prohibition** doth lie in all Cauſes, wherein a *Habeas Corpus* doth lie at the Common Law: *Mich.* 22 *Car. B. R.* For this Court hath Power as well to ſee Juſtice done concerning a Man's Eſtate, as to his Perſon.

Lies in all Cauſes wherein *Habeas Corpus* lies at Common Law.

E **Although** it be queſtionable, whether a Prohibition do lie in the Caſe wherein it is moved for, yet this Court will grant it; ſo that the Parties concerned may appear here, and plead or demur, as they ſhall be adviſed, to the Intent the Matter may come in Queſtion here and be decided, whether a Prohibition doth lie in the Caſe or not? But if it appear to the Court clearly, that a Prohibition doth not lie, the Court will not grant it: *Mich.* 22 *Car. B. R.* And if it ſhall appear to the Court that a Prohibition doth not lie, the Court will then grant a Conſultation, whereby the Party that was ſtopped in his Proceedings by the Prohibition, may now proceed in that Court, to which the Prohibition was directed. *Mich.* 22 *Car. B. R.*

The Court will grant a Prohibition in Caſes where it is doubted, whether it lies or not.

F **That** the granting Prohibitions is not a diſcretionary Act of the Court, but *ex merito juſtitiæ. Raym.* 4, 92.

The granting of it, is not diſcretionary.

G **Where** the Freehold or the Power to grant an Office, may come in Queſtion in the Spiritual Court, a Prohibition ſhall be granted. *Id.* 88. *Vide poſtea.*

It lies to the Spiritual Court, where a Freehold may come in Queſtion.

H **Sir** *D. M.* Knt. was ſued in the Eccleſiaſtical Court by the Name of Sir *D. M.* Knt. and Bart. and he pleaded that he was only Knt. and not Bart. And the Court diſallowed the Plea, and proceeded to Excommunication, and a Prohibition was granted. *Id.* 219.

Granted to the Eccleſiaſtical Court, where they diſallowed a good Plea, and proceeded to Excommunication.

I **A Prohibition** may be granted to the Prerogative Court to hinder them from granting Letters of Adminiſtration againſt the Law; or to hinder any other Proceedings, which are not conſonant to the Common Law. *Hill.* 22 *Car. B. R.*

It lies to the Prerogative Court to hinder the granting Adminiſtration againſt Law.

If the Eccleſiaſtical Courts proceed in a Method different from the Common Law, Prohibition lies to ſtop their Proceedings.

A **If** the Common Law and the Spiritual Law do differ in the Way of their Proceedings, in Matter of Subſtance, and the Eccleſiaſtical Court will proceed according to the Courſe of their Law, this Court will grant a Prohibition to ſtop their Proceedings: *Paſch.* 22 *Car. B. R.* For in Things doubtful the Common Law is to be preferred before the Spiritual Law, as being the more general Law, and more tending to the general Good of the People, and the Publick Peace of the Nation, and that which beſt ſuits with the Conſtitution of the Nation.

For Churchwardens concerning their Accounts.

B **A Prohibition** for Churchwardens concerning their Account of Rates gathered. 2 *Lutw.* 1027, *&c.*

For pulling down Seats in the Church.

C *Simile*, concerning pulling down old, and erecting new Seats in the Church. *Id.* 1032, *&c.*

Granted on a Suggeſtion that nothing is due for Baptiſm.

D **A Suggeſtion** that by the Law, *&c.* no Perſon ought to pay any Sums for the Sacrament of Baptiſm againſt their Wills: Granted upon the Argument. *Id.* 1030, *&c.*

If the Spiritual Courts make an erroneous Decree in a Cauſe of which they have Cognizance, *B. R.* will not grant a Prohibition: *Aliter*, if they have no Conuſance of it.

E **Where** a Matter is properly determinable in the Spiritual Court, if they make an erroneous Decree, this Court will not grant a Prohibition, but the Party grieved muſt appeal to the Delegates; but if they decree a Matter which they have no Juriſdiction of, this Court will grant a Prohibition to annul the Sentence.

None lies without a Suggeſtion.

F **No** Prohibition to an inferior Court without a Suggeſtion. 1 *Lev.* 258.

Nor after Judgment.

G **No** Prohibition to inferior Courts after Judgment. 2 *Lev.* 230.

If an inferior Court proceed after a Cauſe is removed, their Proceedings are void.

H **If** the Court of the Lord Mayor of *London*, or other inferior Court, ſhall hold Plea of a Cauſe after it is removed into this Court by a Writ of *Habeas Corpus* or *Certiorari*, the Proceedings are abſolutely void, *& coram non Judice*, the Matter being removed from them to the ſuperior Court: *Trin.* 25 *Car. B. R.* For after it is removed, they have no farther Conuſance of the Cauſe. *Vide* 2 *Lutw.* 1023, 1026.

It lies to any inferior Court that proceeds in a Cauſe out of their Juriſdiction.

I **A Prohibition** may be granted out of this Court to any other inferior Court that doth proceed in any Cauſe, which doth not lie within their Juriſdiction: *Trin.* 23 *Car. B. R.* For ſuch Proceeding is to exceed their Authority, which the Court will not ſuffer; but is to keep all inferior Courts within their Bounds.

Lies to inferior Court for not allowing a Plea.

K **On** an *Aſſumpſit* brought in an inferior Court, the Defendant tendered a Plea there, That the Contract upon which the Action was brought, was made out of the Juriſdiction; and the Court there refuſed to allow it: And on Affidavit in *B. R.* of the ſaid Tender and Refuſal, this Court granted a Prohibition. *Raym.* 189.

A Pro-

A **A Prohibition** granted to the Court of the Chamberlain of *Cheſter*; for that a Court of Equity cannot charge the Inheritance of a Man's Land with a Rent. *Raym.* 221.

Granted to the Court of the Chamberlain of *Cheſter*.

B **See** where one was moved for to the Court of Chancery upon the Stat. of 4 *Hen.* 4. *cap.* 23. *ſed Adjournat. Id.* 227.

Prohibition moved for to the Court of Chancery.

4 H. 4. cap. 23.

C **The** Defendant in the Court of Admiralty may have a Prohibition to that Court after he hath pleaded there, although he cannot have it to an inferior Court after he hath pleaded; for an inferior Court doth not draw the Matter in Queſtion *ad aliud examen*, but doth proceed therein according to the Common Law; but the Court of Admiralty doth draw the Matter *ad aliud examen*, that is, to try it by the Civil Law: *Trin.* 23 *Car. B. R.* And therefore this Court will uſe their Authority at any Time to ſtay their Proceedings in the Admiralty, although the Defendant have by his incautelous pleading allowed their Juriſdiction; becauſe not only the Party that prays the Prohibition is injured by their Proceedings, but the Common Law it ſelf, which the Judges are bound to maintain.

It lies for the Defendant in the Admiralty-Court after he hath pleaded.

D **It** is not neceſſary for him that Libels in the Court of Admiralty, to ſhew in his Libel, that the Common Law hath no Juriſdiction of the Matter for which he libels; for that is taken for granted upon preferring his Libel; but he that prays a Prohibition to the Admiralty in this Court, muſt ſuggeſt ſomething, wherein in reſpect of the Cauſe depending there, and for which he prays the Prohibition, that Court hath no Juriſdiction of the Cauſe: *Hill.* 23 *Car. B. R.* For the Admiralty cannot determine, whether the Common Law has Juriſdiction or not, and therefore it would be a vain Allegation; but this Court can judge of the Juriſdiction of the Courts of Common Law, and can determine whether other Courts do intrench upon their Juriſdictions, or not.

He that prays a Prohibition to the Admiralty, muſt ſuggeſt that that Court has no Juriſdiction of the Cauſe.

E The Plaintiff ſuggeſted, that the Defendant libelled for Defamation in the Court of the Arches, and that he was an Inhabitant in the Dioceſe of *London*, *contra formam Statuti.* 23 *H.* 8. *c.* 9. And it was doubted if a Prohibition would lie in that Caſe. *Raym.* 91, 92.

Libel for Defamation in the Courts of Arches, and Suggeſtion that the Party lived in the Dioceſe of *London*. It was doubted whether a Prohibition would lie.

23 H. 8. cap. 9.

F **Adjudged,** That a Prohibition lay to the Spiritual Court, becauſe they refuſed to deliver a Copy of Articles: And they held, That the Stat. of 2 *H.* 5. *c.* 3. extends where the Proceedings in the Eccleſiaſtical Court are *ex officio*, as well as betwixt Party and Party; and that a Prohibition lies for not delivering a Copy of a Libel in ſuch Caſe.

It lies to the Spiritual Court, for refuſing to deliver a Copy of Articles.

2 H. 5. cap. 3.

G **If** the Court of Admiralty do hold Plea of any Matter which is not maritime, although the Thing were done upon the Sea, yet this Court will grant a Prohibition to ſtop their Proceedings: *Hill.* 23 *Car. B. R.* For the Court of Admiralty hath only

It lies to the Admiralty for holding Plea of a Matter not maritime, though done upon the Sea.

Juriſdiction in maritime Cauſes, *viz.* ſuch as only concern Sea-Affairs, and not of all Matters done at Sea, as Contracts, Properties, *&c.* the Trial whereof belongs to the Common Law only, and not to the Admiralty.

B. R. will grant a Prohibition though a Conſultation have been granted in *C. B.* in the ſame Cauſe.

This Court will grant a Prohibition to the Admiralty if there be Cauſe for it, although a Conſultation hath been granted in the Court of Common Pleas in the ſame Cauſe: *Hill.* 23 *Car. B. R.* For this Court is not bound by the Rules of the Common Pleas, if they differ from them in Opinion.

The Court ought not to deny a Prohibition if there be cauſe for granting it.

A **This** Court ought not to deny the Party a Prohibition that doth pray it, if there appear Cauſe for a Prohibition; for it is not a Thing Arbitrary, or *ex gratia Curiæ* to grant it, or not grant it: *Hill.* 23 *Car. B. R.* For to deny it were to deny Juſtice to the Party, in denying him the Benefit of the Common Law, which is every freeborn *Engliſhman*'s Birthright, which he may challenge as his Right and Inheritance.

Where Damages, *&c.* in a Prohibition.

B **When** Damages and Coſts in a Prohibition. 3 *Lev.* 352. Concerning Dilapidations. *Id.* 412.

Prohibition lies to the Spiritual Court after Sentence given in the Cauſe.

C **A Prohibition** may be granted to the Spiritual Court, after a Sentence given in the Cauſe in that Court, for which the Prohibition is prayed, if there be Cauſe; but the Court will not do it, until they have heard Counſel ſpeak on both Sides to inform their Conſciences, although before a Sentence they uſe to grant it upon a bare Suggeſtion of the Party, if the Matter ſuggeſted will bear it. *Tueſday, July* 2, 1650. *B. S.* and *Paſch.* 1652. *B. S.* For a Sentence in an Eccleſiaſtical Court is in the Nature of a Judgment given in the Common Law, and preſumed to be given upon mature Deliberation; and therefore this Court will not, but by good Advice, make a Sentence there given void, or hinder the Execution of it: So great Reſpect doth this Court bear to the judicial Proceedings of other Courts.

Denied on Suggeſtion that Executor was ſued for double Damages for not ſetting out Tithes.

D **A Prohibition** denied to the Spiritual Court, on Suggeſtion that the Executor was ſued there for double Damages, for not ſetting out of Tithes: *Raym.* 95.

Alſo on a Suit for a Legacy.

E *Simile* upon a Suit there for a Legacy. *Id.* 123.

To the Marches of *Wales* for ſuing there for a Legacy.

F **A Prohibition** granted to the Court of the Marches of *Wales* at *Ludlow*, on ſuing there for a Legacy, contrary to their Inſtructions. *Id.* 191.

Denied upon ſcandalous Words.

G **See** Prohibition denied upon ſcandalous Words, 2 *Lut.* 1037, *&c.* 1039, 1043, 1053. 2 *Lev.* 49, 63, 66.

Tithes.

H **Concerning** Tithes, *&c.* 2 *Lutw.* 1043, *&c.* 1057, *&c.* 1062, *&c.* 1071.

Words.

I **Concerning** Words ſpoken. 3 *Lev.* 17, 18, 119, 137, 350.

Marriage.

K **For** a Marriage. *Id.* 1059. To diſſolve a Marriage. *Id.* 1075.

Mortuary.

L **For** a Mortuary. *Id.* 1066, *&c.*

Directed to them or the Court, at Election.

M **A Prohibition** directed to them, or the Court, at Election. 1 *Keb.* 336. *pl.* 11.

A **A Prohibition** doth not lie to the Court of Admiralty in Caſes of Felony, which are to be tried there; yet if there be Cauſe, this Court will grant a *Certiorari* to remove the Cauſe hither: By *Rolle* Chief Juſtice, in *Dethick*'s Caſe. 29 *Octob.* 1650. *B. R.* *Quare tamen, quia Curia adviſare vult.*

Lies not to the Admiralty in Caſes of Felony triable there.

B *Trin.* 1650. **By** the Court. If an Action be brought in an inferior Court, and the Defendant tenders a Plea there, and ſwears, that the Cauſe of Action is not within the Juriſdiction of the Court; if they refuſe this Plea, this Court will grant the Defendant a Prohibition to ſtay their Proceedings in the Cauſe. *Vide ante.*

To an inferior Court for refuſing the Plea.

C **Upon** a *Modus decimandi* ſuggeſted, this Court will grant a Prohibition; but where the Suit in the Spiritual Court is Payment, or Non-payment of a *Modus*, this Court will not grant a Prohibition, becauſe that is a Matter triable there, which the other is not. See 2 *Lutw.*

It lies on Suggeſtion of a *Modus decimandi*, but not where the Suit is Payment or Non-payment.

D **But** *Note*, If in a Prohibition upon a *Modus*, the Party who hath it granted, doth not within ſix Kalendar Months, bring two or more antient Witneſſes before a Judge of the Court where the Prohibition was granted, to prove his Suggeſtion upon Oath, a Conſultation ſhall be granted to authorize the Spiritual Court to proceed *Brevi de Prohibitione non obſtante.* See the Stat. *tempore Ed.* 6.

What the Party muſt do who has a Prohibition granted on a *Modus*.

E **It** is a Rule, That a Prohibition ſhall not be granted where the Proceedings in the Eccleſiaſtical Court are not againſt the Law of the Land, nor the Liberty of the Subject. *Cro. Jac.* 431.

A Prohibition ſhall not be granted where the Proceedings are not contrary to the Law, or the Privilege of the Subject.

F **How** to declare upon a Prohibition, and what Title to ſhew. *Hob.* 300, 301.

How to declare upon Prohibitions.

G **No** Prohibition ſhall go to the Court of Admiralty upon a Suit there for Mariners Wages; becauſe they become due for their Labour done upon the Sea, and the Charter and Contract made upon the Land is only to aſcertain them. 3 *Lev.* 60. See the Stat. 4 & 5 *Annæ*.

No Prohibition to the Admiralty-Court for Seamen's Wages.

4 & 5 **Annæ.**

H **A Prohibition** ſhall not be granted to the Admiralty-Court to ſtay the Proceedings upon a Bond made beyond Sea, ſued there; becauſe if the Witneſſes live beyond Sea, it may be examined there: Or it may be ſued at Common Law, at the Plaintiff's Election. 3 *Leon.* Caſe 314.

Nor to ſtay a Suit there upon a Foreign Bond, and why.

It may be ſued at Common Law.

I **By** the Stat. of 2 *H.* 5. *cap.* 3. it is enacted, That at what Time a Libel is grantable by Law, it may be granted and delivered to the Party: And it hath been adjudged, That a Prohibition lies if a Copy be not delivered upon Demand. 3 *Bulſt.* 51.

A Libel ought to be delivered.

2 **H.** 5 **cap.** 3.

A Prohibition lies to ſtop the proving of a Will as to Lands.

A **Where** there is a Suit depending in the Eccleſiaſtical Court, as to the proving of a Will for a Perſonal Eſtate, and alſo for Lands; a Prohibition may be granted to ſtop their Proceedings there, as to the Lands only: For all their Proceedings as to Lands are abſolutely void, and *coram non Judice:* But they may nevertheleſs proceed there as to the Perſonal Eſtate; they having a Juriſdiction as to the one, and as to the other they have none. See *Cro. Car.* 94. *pl.* 19.

How it is where a Will contains Lands and Goods, and is controverted.

B **Where** a Will contains Lands and Goods, the Court will not grant a Prohibition for the whole in the generality: But if in ſuch ſpecial Caſe it be alledged, That the Party who made the Will was *Non Compos*, a Prohibition ſhall there be granted for the Whole; but ſuch Prohibition is not to be granted in all Caſes where a Will contains in it a Diſpoſition both of Lands and Goods, for then it would hinder the Proceedings in the Eccleſiaſtical Court; and before a Probate be there, an Executor cannot bring an Action. *Cro. Jac.* 346. *pl.* 15. 347. See Title **Probate,** and *Cro. Car.* 395. *pl.* 7. 396.

A Prohibition lies to ſtop proving of a Will for Lands and Goods.

C **But** in the 6 *Rep.* 23. adjudged, That where a Will concerns Lands and Goods, and the Validity of the Will, whether *Compos* or no, comes in Queſtion; which Matter is triable at the Common Law, and the Lands and Goods being mixed together in the Will, a Prohibition ſhall go, and there ſhall be no Conſultation to any Part until the Matter be tried at Law. *Vide Salk.* 552. denied. *Comberb.* 46. 170.

Property ſhall be tried at Law.

D **Where** Property comes in Queſtion, a Prohibition ſhall go in the Spiritual Court. 4 *Leon.* Caſe 261.

The Court will grant a Prohibition, where the Spiritual Court refuſes to admit the Proof of Payment of a Legacy.

E **Where** the Judge of the Spiritual Court refuſes to admit the Proof of one Witneſs to the Payment of a Legacy, the Court of King's Bench will grant a Prohibition, although it be after Sentence. *Show. Rep.* 158, 172. See *Cro. Eliz.* 88.

So where they will not admit the Proof of one Witneſs for the Payment of Tithes.

F **The** Party offered to prove Payment of Tithe-Pigeons by one Witneſs, and they refuſed without two Witneſſes; and a Prohibition was granted. *Cro. Eliz.* 666. *pl.* 20. *Moore*, Caſe 568.

For not allowing the Proof of Payment by one Witneſs.

G **A Prohibition** was granted, becauſe Payment proved by one Witneſs was diſallowed. *Latch.* 117.

Spiritual Court allows no Plea in Diſcharge of Tithes.

Prohibition, without pleading of it.

H **The** Spiritual Court will not allow any Plea in Diſcharge of Tithes; and the Allegation of the Judges Refuſal is but Matter of Form: For the Party may have a Prohibition before any ſuch Plea pleaded by him in Diſcharge of ſuch Tithes; and the Refuſal is not traverſable. 2 *Rep.* 45. *a.* *Cro. Eliz.* 511. *pl.* 36.

A **Upon** a Suggeſtion of a *Modus Decimandi*, the Court will not grant a Prohibition, unleſs the *Modus* be pleaded in the Spiritual Court, and diſallowed there; becauſe that Court will allow a *Modus*: Alſo the Court will require an Affidavit of a *Modus* before they will grant a Prohibition.

Where the Court will grant a Prohibition upon a *Modus*, and where not.

B **A Suggeſtion** of a *Modus* of four Shillings *per Annum* was made, and the Proof was, That it was four Shillings and ſix Pence: For that it appeared, that there were not any Tithes in Kind due; yet it is a *Modus* ſufficient to bar the Parſon of his Conſultation. *Cro. Eliz.* 819. *pl.* 13.

If a *Modus* be found, though not that which is ſuggeſted, yet it is good enough.

C **In** a Suit for Tithes in the Spiritual Court, the Defendant pleads, That the Plaintiff there was not lawful Incumbent, but one *J. S.* which Plea the Court diſallowed, and a Prohibition was granted. 3 *Leon.* Caſe 359.

A Prohibition granted to the Spiritual Court, where the Party pleaded, That the Plaintiff was not lawful Incumbent, but one *J. S.*

D **The** Plaintiff in the Spiritual Court, Leſſee of a Parſon, may move for a Prohibition, where the Defendant claims to be diſcharged by a former Leaſe: For they cannot meddle with the Trial of Leaſes, or real Contracts, tho' they have Juriſdiction of the Original Cauſe, (*viz.* for Tithes.) *Cro. Jac.* 350. *pl.* 3.

Where Plaintiff in the Spiritual Court may have a Prohibition: The Spiritual Court cannot try Leaſes, or real Contracts.

E **Where** the Suit is for a Penſion, it being merely ſpiritual and triable in the Spiritual Court, no Prohibition ſhall be granted. *Cro. Jac.* 666. *pl.* 3.

No Prohibition to be granted to ſtay a Suit for a Penſion.

F **A Prohibition** may not be granted to an Inferior Court, to ſtop their Proceedings, in a Cauſe which is triable within their Juriſdiction, after that the Defendant hath allowed the Juriſdiction of the Court by pleading to the Action; for it is then too late to move for a Prohibition. 2 *Lev.* 230.

No Prohibition to an Inferior Court in a Cauſe after Pleading.

G **No** Prohibition will lie at the Common Law upon a Suit for the Word *Whore*, becauſe it is of Eccleſiaſtical Cogniſance. 2 *Lev.* 63.

Will not lie upon a Suit for the Word *Whore*.

H **A Prohibition** will not lie upon a Suit in the Spiritual Court by Huſband and Wife, for calling the Huſband *Cuckold*: Becauſe the Words charge the Wife with Incontinency, and therefore ſhe ſhall have this in the Eccleſiaſtical Court to puniſh the Defamation that ſubjects her to Penance in the Eccleſiaſtical Court; But if the Huſband had ſued ſolely, then the Prohibition would well have gone; becauſe he doth not incur ſuch Danger by the Speaking of the Words. 2 *Lev.* 66.

It lies not upon a Suit for calling of the Huſband *Cuckold*.

I **Cuſtom** alledged to repair a Chapel, and to be diſcharged of the Repair of the Pariſh Church, is triable at the Common Law; becauſe they cannot try Cuſtoms, their Law and our Law differing in the Nature of Cuſtoms. 2 *Lev.* 102.

Cuſtom to repair a Chapel, is triable at the Common Law.

K **A Cuſtom** alledged in the Eccleſiaſtical Court, if denied, a Prohibition will go. 2 *Lev.* 103.

A Prohibition will go upon a Cuſtom denied.

Too late to move for a Prohibition after Sentence confirmed upon an Appeal of Delegates.

A **Where** a Perſon had a Sentence for a Legacy, and upon an Appeal from it to the Delegates, the Sentence was confirmed, and Coſts taxed: Now a Prohibition was prayed, upon a Suggeſtion that he lived in another Dioceſs; but the Court would not grant it, for having ſo long allowed the Juriſdiction of the Court, they came too late for the Prohibition. *Cro. Car.* 97. 2 *Roll. Abr.* 319. See 5 *Mod.* 140, 141.

No Prohibition after a Conſultation.
50 **Ed.** 3. cap. 4.

B **No** Prohibition ſhall be allowed after a Conſultation duly granted. 50 *Ed.* 3. *cap.* 4.

A Preſcription that the Biſhop of *W.* and all his Farmers, have holden the Lands of the Manor of *E.* diſcharged from the Payment of Tithes, and held good.

C **A Suggeſtion** that the Biſhop of *W.* and all his Predeceſſors, Time, *&c.* held the Manor of *E.* for them, and all their Farmers, Tenants for Years, and at Will, diſcharged from the Payment of Tithes; and held to be a good Preſcription for the Farmer, as well as if it had been the Biſhop himſelf; for the Leſſor being of Right diſcharged, his Leſſee ſhall be alſo diſcharged againſt the Parſon: *Cro. Eliz.* 511. *pl.* 36. 512. And ſo may any other: *Moore*, Caſe 844.

But a Layman cannot preſcribe in a *Non Decimando.*

D **Spiritual** Perſons may, but a Layman cannot preſcribe in a *Non Decimando.* *Moore*, Caſe 598, 844.

Bounds of a Pariſh not triable there.

E **Bounds** of a Pariſh are not triable there. 2 *Lev.* 103.

Lies where there are two *Modus's.*

F **A Suit** for a *Modus* in the Eccleſiaſtical Court, and another *Modus* pleaded; a Prohibition lies. *Ibid.*

Where they may try Matters of Law which come in incidentally.

G **Although** the Eccleſiaſtical Court may try Matters triable at Law, which come in incidentally, where the Principal is of Eccleſiaſtical Cogniſance; yet they ſhall be prohibited, if they proceed upon Temporal Matters contrary to the Common Law. 2 *Lev.* 64.

Where both Laws have Conuſance, the Common Law takes Place.

H **Of** Things whereof our Law and the Eccleſiaſtical take Conuſance, we are only to rely upon our Law, and not upon the Eccleſiaſtical Law. *March* 84.

What Remedy where the Proceedings in the Spiritual Court are erroneous.

I **Where** the Eccleſiaſtical Court hath the ſole Conuſance of the Cauſe, their Proceedings, although they be erroneous, are not examinable at the Common Law, and no Prohibition lies; but the Remedy is by Appeal. *March* 92, *pl.* 152.

An Attachment lies for commencing of a new Suit, after a Prohibition granted.

K **A Man** was ſued in the Spiritual Court for Tithe-Milk; he alledges a *Modus* for the Field wherein the Cows went, and had a Prohibition; the Parſon begins a new Suit againſt him in the Spiritual Court for the ſame Matter, alledging only fewer Cows. The Party ſhewing all this Matter to the Court, moved for an Attachment, and had it. *Leon.* 111. Caſe 151.

A **A Prohibition** lies for Words of Heat, which do not touch a Man in his Profeſſion. 2 *Lev.* 49.

Lies for Words of Heat.

B **The** Plaintiff in an Action upon a Prohibition ſhall now recover his Coſts, by the Statute of 8 & 9 *W.* 3. *cap.* 10.

Coſts to be recovered in an Action upon a Prohibition.
8 & 9 W. 3. cap. 10.

C **An** Agreement between a Parſon and a Pariſhioner to pay ſo much *per Ann.* for his Tithes during ſuch a Time, is a good Diſcharge for the Time, and a good Compoſition to have a Prohibition upon. 1 *Leon.* 151. Caſe 208.

An Agreement between a Pariſhioner and Parſon for Tithes, is a good Ground for a Prohibition.

D *De molendino de novo erecto non jacet Prohibitio.* Cro. Jac. 429. *pl.* 7.

A new erected Mill ſhall pay Tithes.

E **Prohibition** granted to a Suit for a Legacy for refuſing Proof of Payment by one Witneſs, *aliter* in Probate of Wills. *Salk.* 547. *Comberb.* 160. *Carthew.* 142.

On Refuſal of Proof of Payment.

G **Where** Matter of the Suggeſtion does not appear on the Libel, Affidavit is neceſſary. *Salk.* 549.

Affidavit.

H **And** the Suggeſtion in the Caſe of Tythes muſt be proved within ſix Kalendar Months from the Teſte of the Prohibition. *Ibid.* 554.

Proof of the Suggeſtion.

I **Prohibition** ſhall not go for a *Modus* or other foreign Matter, unleſs pleaded below. *Ibid.* 551.

Modus.

K *A.* ſubſtracts Tythes in one Dioceſe, and removes into another, and being afterwards found in the firſt, is there cited, *&c.* and Conſultation aw rded, for Subſtraction of Tithes is local. *Ibid.* 549

Citing out of the Dioceſe.

L **A Prohibition** may be granted after Sentence, where the Cauſe is not of Spiritual Conuſance; *aliter* of citing one out of the Dioceſe. *Salk.* 548. *Vide Carthew* 33, 34, 97, 142.

After Sentence.

M **One** having a preſcriptive Right to a Seat in a Church, may, if diſturbed, ſue in the Spiritual Court to have his Poſſeſſion quieted. *Salk.* 551.

To quiet the Poſſeſſion of a Seat.

N **On** a Suit there againſt the Vicar of *S.* for not performing of Divine Service in the Chapel of *C.* as bound by Cuſtom; a Prohibition denied. *Ibid.* 550.

Denied on a Suit for not performing Divine Service.

O **Prohibition** granted to a Suit, for Solicitation of Chaſtity, he having been convicted on an Indictment of an Aſſault with an Intent to raviſh. *Ibid.* 552.

After Conviction for the ſame Offence.

P **A Prohibition** lies to the Spiritual Court in any Suit for denying a Copy of the Libel, but not to the Admiralty. *Ibid.* 553.

Denying a Copy of the Libel.

Q **And** ſee where a Prohibition to the Admiralty denied, unleſs the Defendant wou'd appear and give Bail. *Ibid.* 548.

Where denied unleſs Bail given.

Where Prohibitions have been granted.

Several Prohibitions to the Spiritual Court for taking Bail, for calling Knave, againſt annulling Marriage, and Baſtardizing. *Salk.* 547, 548. A B

Court of Honour.

So to the Court of Honour on a Suit there for Words. *Ibid.* 553.

To a Court of Equity.

See a Prohibition granted to a Suit in Equity, for Diſcovery of Matters to make the Defendant forfeit his Freehold. *Ibid.* 550. C

To the Court of Exchequer.

And ſee a Motion and Argument for a Prohibition to the Court of Exchequer, on an Attachment, if ſued thence for proceeding in *B. R.* *Ibid.* 551. D

For a Matter indictable.

It lies to the Conſiſtory Court to ſtay a Suit there by a Libel, for a Matter indictable at Common Law. *Comberb.* 71. E

After Indictment.

So to the Eccleſiaſtical Court to ſtay the Examination of the Validity of a Marriage after an Indictment againſt the Huſband for marrying two Wives, and a Verdict and Judgment thereupon. *Ibid.* 72. F

For Inceſt after the Death of the Party.

So on a Suit there for annulling a Marriage as Inceſtuous, after the Death of one of the Parties. *Comberb.* 200. *Vide* 356, 360. G

For locking up a Chapel.

So on a Libel there for locking up a Chapel where the Parſon had a Grant of 10 *l.* *per Annum* for reading Prayers there. *Salk.* 93. H

For Repair of a Church.

So on a Suit there for repairing a Pariſh Church, where the Party was chargeable to repair a Chapel which had Parochial Rights. *Comberb.* 132, 148. I

For keeping a School.

So to ſtay Suit as to an Examination relating to the Office of Maſter of a Free-School, he having been once licens'd. *Ibid.* 324. K

For removing a Chancellor.

So to ſtay a Suit in the Arches for removing a Chancellor as not qualify'd, he having been allow'd, *&c.* *Ibid.* 305. L

To the Cinque Ports.

It lies to the Chancery Court of the Cinque Ports, to ſtay a Suit there for Diſcovery of a Cuſtom. *Ibid.* 261. M

To the Courts of Grand Seſſions.

So to a Chancery Court in *Wales*, to ſtay a Suit there againſt one who lives out of their Juriſdiction, tho' the Bill was for Diſcovery of a Deed which concerned Lands within their Juriſdiction. *Comberb.* 469. N

To the Court of Admiralty.

So to the Court of Admiralty on a Suit there for a Stipulation made at Land. *Ibid.* 109, 110. O

The like.

So to the Court of Admiralty, where it has not Original Juriſdiction, altho' a Queſtion ariſes which is proper for their Conuzance; *ſecus*, where it has Original Juriſdiction, tho' a Queſtion ariſes not proper for them. *Ibid.* 462. P

A **It** lies not for citing one out of the Dioceſe after Plea pleaded. *Comberb.* 105, 106.

After Plea.

B **Nor** on a Suggeſtion that a Hundred ought to be diſcharged of Herbage or other Tithes by Cuſtom. *Ibid.* 403, 404.

Diſcharge of Tithes.

C **Nor** for Words ſpoken of the Wife to the Huſband, *viz.* ſhe is a Drunken, Cheating, Forſworn Jade. *Ibid.* 37.

For Words.

D **Nor** for calling a Man Cuckold, tho' averr'd that it ſignifies his Wife is a Whore. *Ibid.* 312.

Cuckold.

E **Nor** for calling one Rogue, Raſcal, Whore-Maſter, and Son of an Old Perjur'd Affidavit Bitch. *Ibid.* 226.

For Words.

F **Nor** for ſaying he is a Whore-Maſter, and hath had and now hath a Baſtard. *Ibid.* 434.

The like.

G **Alſo** after a Conſultation for not proving the Suggeſtion, it does not lie on the ſame Libel. *Ibid.* 63.

Not after a Conſultation.

H **The** Spiritual Court cannot try a *Modus*, except it be on a Payment or no Payment. *Ibid.* 247.

Modus.

I **Juriſdiction** of the Spiritual Court is not local, *quoad* the Cauſe of the Action, but the Reſidency of the Perſon. *Ibid.* 105, 106.

Locality of Juriſdiction.

K **He** who occupies Land in another Dioceſe, is an Inhabitant there, and chargeable to Church Ornaments, *&c.* *Ibid.* 132.

With an Inhabitant as to Church Ornaments.

L **Where** ſeveral join in a Suggeſtion, the Prohibition ſhall be joint, and the Declaration ſeveral. *Ibid.* 447.

Joinder in Action.

M **See** of a Prohibition *Cauſa Jactitationis Maritagii.* *Ibid.* 72.

Marriage.

N **Note,** No Coſts are allowed in a Prohibition. *Ibid.* 20.

Coſts.

O **Suggeſtion** in the Spiritual Court, that the Inhabitants of an antient Tenement had ſat in the firſt Seat of an Iſle till removed by the Biſhop; a Prohibition was prayed as upon an Idle Cuſtom, which they went to try in the Spiritual Court, and denied. *Skin.* 7.

Seats in the Church.

P **Prohibition** denied for want of an Affidavit, that a Plea was refuſed in the Eccleſiaſtical Court. *Ibid.* 20.

Affidavit.

Q **The** Court-Chriſtian cites the Members of Corporations by their proper Names, though it proceeds againſt them in their Politick Capacities, for that Court has no Way to compel an Appearance, but by Perſonal Proceſs; and a Prohibition was denied upon a Citation. *Ibid.* 27, 28.

Corporations.

It

After Sentence.

A **It** lies after Sentence in the Eccleſiaſtical Court, where the Matter is not conuſable there, although you have allowed their Juriſdiction by pleading, *&c.* *Comberb.* 254, 463. 3 *Salk.* 287, 288.

What is a Prohibition after Sentence.

B **Note**, A Prohibition granted before Sentence, but delivered after, is a Prohibition after Sentence. *Comberb.* 448.

Where it lies after Sentence.

C **It** lies after Sentence on a Suit there for theſe Words, *viz.* Mr. *N.* is a Rogue, and will never be good till three Feet under Ground; and I had rather my Son ſhou'd make Hay on a Sunday, than hear Mr. *N.* preach. *Ibid.* 253.

The like.

D **Where** it lies to the Spiritual Court after Sentence, and where not. *Ibid.* 254, 448.

Where not to the Admiralty.

E **It** does not lie to the Admiralty on a Suit for Seamens Wages. *Ibid.* 71.

The like.

F **Nor** to ſtay a Suit there againſt the Maſter of a Ship, who had hipothecated it for neceſſary Repairs, *&c.* *Ibid.* 135.

The like.

G **Nor** to ſtay a Suit there for the Caption of a Ship on the Sea, altho' the Converſion was on the Land. *Ibid.* 444.

Super altum Mare.

H *Sed Quære*, Whether it ought to appear on the Libel that the Caption was *ſuper altum Mare*, where the Defendant ſhews it by his Anſwer. *Ibid.* 462.

Diſtributions.

I *Quære*, Where a Prohibition lies to the Eccleſiaſtical Court on the Statute of Diſtributions. *Ibid.* 15, 16.

Mortuary.

K *Quære*, If it lies to ſtay a Suit in that Court for a Mortuary. *Ibid.* 166.

Proctor's Fees.

L *Quære*, If it lies to ſtay a Suit there for Proctor's Fees. *Ibid.* 237.

Marriage.

M **It** lies not to ſtay a Suit there for marrying one's Siſter's Baſtard Daughter. *Ibid.* 356.

For not providing Neceſſaries for the Communion.

N **Nor** to ſtay a Suit for not providing Communion Wine at *Eaſter*, on a Suggeſtion that the Parſon ought to do it. *Ibid.* 76.

Annuity.

O **Nor** where the Biſhop libels for an Annuity, and before his own Commiſſary. *Ibid.* 131.

Againſt a Suit to baſtardize Iſſue.

P **One** married the Siſter of his former Wife, and had three Children by her, the Huſband and Wife were proceeded againſt in the Spiritual Court; one of the Children moved for a Prohibition that ſhe might not be baſtardiſed in the Spiritual Court; Cauſe to be ſhewn why a Prohibition ſhould not go. *Skin.* 37.

Inceſtuous Marriage.

Q **Proceeding** in the Spiritual Court againſt one for marrying his Brother's Daughter, and a Prohibition denied. *Ibid.*

For a Suit againſt one out of an inferior Juriſdiction.

A **Prohibition** moved for to the Chancery Court of *Lancaſter*, upon a Suggeſtion that the Town of *Pontefract* is out of the Juriſdiction of the Dutchy, tho' the Honour of *Pontefract* appears by the Caſe to be holden of it, and for that the Defendants lived out of the Juriſdiction; Cauſe ordered to be ſhewn.

For refuſing a Plea.

B **One** excommunicated for not receiving the Sacrament in his Pariſh Church in the City of *Briſtol* after a Monition, pleaded in the Eccleſiaſtical Court, that he had received the Sacrament in the Country, and in his Pariſh Church there; which Plea they refuſed; a Prohibition was granted. *Skin.* 101.

After Sentence and an Appeal.

C **After** a Sentence and an Appeal brought, the Court granted a Prohibition to the Prerogative Court upon this Caſe; *H.* made *M.* his Executor, and after *M.* became a Bankrupt; and after Examination *ore tenus*, that Court revoked the Probate, but it was adjudged that Bankruptcy is no Diſability, for the Teſtator's Eſtate is not liable to be aſſigned by the Commiſſioners. *Ibid.* 299.

Nuſance.

D **A Prohibition** granted to ſuppreſs a Bowling-Green. *Ibid.* 627.

In Civil and Criminal Caſes.

E **Inſtances** where Prohibitions have been granted in Cauſes Civil as well as Criminal. *Ibid.* 629.

Compoſition.

F **Where** there is a Compoſition for Tithes, a Prohibition will lie there. *Carthew* 70.

For Words.

G **Not** granted for defamatory Words ſpoken in *London*. *Ibid.* 213.

Error.

H **In** Error on a Libel for a Prohibition in a Suit for Tithes, Variance aſſigned between the Libel and the Plea. *Mod. Caſes in Law and Equity* 1, 2.

Conſultation.

I **The** awarding Conſultation not only ſets aſide the Prohibition, but gives the Plaintiff in the Spiritual Court Leave to proceed there on his Libel. *Ibid.* 3.

Contra formam prohibitionis not material, but Form only.

K **The** alledging in the Declaration that the Plaintiff in the Spiritual Court had proceeded there, *contra formam prohibitionis* is but a ſuppoſed Contempt, and ſuggeſted only as a Ground for a Prohibition. *Ibid.*

L **And** the finding or not finding of ſuch Contempt is altogether immaterial. *Ibid.*

Damages for proceeding *contra prohibitionem*.

M **And** if the Plaintiff here will have any Advantage of the Defendant's proceeding there after a Prohibition, this being Matter of Evidence, ſhould be proved at the Trial, and Damages inſiſted on for ſo doing. *Ibid.*

Upon a Bond to deliver a Will.

A Prohibition to the Spiritual Court, the Defendant having given a Bond to deliver a Will which he got out of that Court. *Mod. Caſes in Law and Equity* 327. A

Cuſtom of *London*.

On Motion for a Prohibition, the Court will not take judicial Notice of a Cuſtom in *London* after Sentence. *Ibid.* 176. B

Matter *dehors* the Libel.

And after Sentence in a Court of Civil Law, nothing *dehors*, the Libel ſhall be admitted to ground a Prohibition. *Ibid.* 194. C

For Seats in a Church.

A Prohibition to the Spiritual Court on a Suit there for Seats in a Church. *Ibid.* 338. D

Viſitor of a College.

On a Prohibition, a Queſtion who is the Viſitor of Univerſity College in *Oxon. Ibid.* 367. E

Mariners Wages.

On a Libel in the Admiralty for Mariners Wages, a ſpecial Contract was ſuggeſted, but a Prohibition was denied. *Ibid.* 379. F

To the Grand Seſſions.

See a Prohibition to the Grand Seſſions in *Wales*, for that the Defendant living in *London*, was ſerved with Proceſs out of that Court, and not appearing thereon, his Lands were ſequeſtred. *Ibid.* 374. G

Promiſe.

See {**Aſſumpſit.** **Conſideration.**}

A Promiſe againſt a Promiſe, is a good Ground for an Action.

A Promiſe againſt a Promiſe, is a ſufficient Ground for an Action. *Cro. Eliz.* 543. *pl.* 12. 703. *pl.* 22. 848, 849. H

Proof.

See { **Evidence.** **Jury.**

A **PRoof is either in giving of Evidence to a Jury upon a Trial, or elſe upon Interrogatories, or by Copies of Records, or Exemplifications of them.**

Proof, *Quid.*

B **If** an ancient Deed which is enrolled, is to be given in Evidence at a Trial, if there be no material Thing objected againſt it, it ſhall be admitted for good Evidence; but if the Iſſue be upon *Factum* or *Non eſt factum*, there it muſt be proved *per Teſtes: Mich.* 1649. *B. S.* For before a Deed can be enrolled, the Party to the Deed doth acknowledge it before a Maſter of the Chancery, that the Deed to be inrolled is his Deed, and prays that it may be inrolled; and if the Deed be to be acknowledged there, or before a Judge of that Court where it is inrolled (which is a ſufficient Authority to inrol it) the Indorſement of the Inrolment upon the Deed is to be credited, becauſe it is made by a known Officer intruſted for that Purpoſe.

Ancient Deed enrolled, ſhall be admitted for Evidence: But if the Iſſue be whether there be ſuch a Deed or not, it muſt be proved by Witneſſes.

C **Where** there are ten Grantors in a Deed, if any one of them acknowledges it before a Maſter in Chancery, or a Judge, it is a ſufficient Authority for the Officer to inrol the ſame.

Ten Grantors in a Deed, if but one acknowledge it, it may be inrolled.

D **A Proviſo** in a Deed, which Proviſo goes in Deſtruction of the Eſtate paſſed by the Deed, muſt be punctually proved *Mich.* 1649. *B. S.* For the Law doth not favour Things which ſound in Deſtruction of Eſtates, but ſuch Things as tend to the Affirmance and Preſervation of them. See **Proviſo.**

Proviſo that deſtroys the Eſtate paſſed by the Deed, muſt be punctually proved.

E **If** a Place be named with an *Alias*, it is not neceſſary upon a Trial to prove both the Names. By *Rolle* Chief Juſtice: *Mich.* 1650. *B. S. Q. tamen*, for *Crawley*, when he was *Juſtice*, was of another Opinion, for he held both but one Name.

A Place named with an *Alias*, both Names need not be proved.

What Proof of the Continuance of a Thing will amount to a Preſcription.

A A Thing which is proved to have been, and continued for ſo long Time as any one living can remember, ſhall be preſumed to have been beyond the Memory of Man, and will be accounted a good Preſcription: *Paſch.* 1650. *B. S.* 11 *Maii.* Becauſe the contrary cannot be proved.

How there may be Proof when a Record is loſt.

B Although a Record of a Thing, or an ancient Deed, be loſt; yet if the Matter may be proved by good Evidence to a Jury, it is ſufficient Proof that there was ſuch a Record, or ſuch a Deed: For the Right doth not wholly depend upon the Record or Deed, they being to make the Right more clearly appear, and to preſerve the Memory of it to Poſterity.

Condition to pay Money upon Proof; how the Proof to be.

C The Condition of a Bond, was to pay Money upon Proof as an Apprentice ſhould miſpend. How this Proof ſhall be made, whether upon a Trial, or how. *Lutw.* 665. *Vide Gold* and *Death.* *Hob.* 91, & 217. *Cro. Eliz.* 236. *pl.* 2. 723. *pl.* 55. *Cro. Jac.* 381, 488. *pl.* 8. 2 *Keb.* 239. *pl.* 16.

Penalty of 100*l.* to pay Money upon due Proof of a Breach, Proof at a Trial is good.

D We bind our ſelves in the Forfeiture of 100 *l.* to be paid upon due Proof of a Breach: Proof at the Trial will maintain an Action. *Lutw.* 441.

To pay Money upon Proof; Proof at the Trial is ſufficient.

E Where upon an *Aſſumpſit* to pay ſo much Money upon Proof of Covin or Deceit, Proof at the Trial is ſufficient. 2 *Leon.* Caſe 273. *Cro. Eliz.* 205. *pl.* 40.

Where Proof ſhall be in the ſame Action.

F Where Proof ſhall be in the ſame Action. *Cro. Jac.* 188. *pl.* 11. See Title **Actions.** *Cro. Jac.* 488. *pl.* 8.

How to plead to bring in the Proof to be made.

G The Condition of a Bond was, That if ſuch Lands were proved to be Parcel of the Manor of *D.* then the Plaintiff ſhall enjoy them. The Defendant ſays, That they were not proved to be Parcel of the Manor: And upon a Demurrer it was held, That he ſhould have pleaded that they were not Parcel of the Manor, ſo that Proof might have been made in the Action. *Cro. Jac.* 232. *pl.* 12.

Proof of a Suggeſtion.

H For Proof of a Suggeſtion, ſee *Cro. Car.* 208. *pl.* 3. and Title **Suggeſtion.** 3

Property and Proprietor.

See **Replevin.**

A **A**N abſolute Proprietor hath an abſolute Power to diſpoſe of his Eſtate as he pleaſes, ſubject only to the Laws of the Land.

How an abſolute Proprietor may diſpoſe of his Lands.

B **There** are three Manner of Properties, *viz.*

Three Sorts of Properties.

1. Abſolute.
2. Qualified.
3. Poſſeſſory, as Pledges, *&c.* 7 *Rep.* 17. *b.*

C **No** Man hath an abſolute Property in any Thing *Feræ Naturæ*, and not tamed. 7 *Rep.* 17. *b.*

Feræ Naturæ.

D **Property** Qualified and Poſſeſſory, a Man may have in thoſe Things which were *Feræ Naturæ*; and this he may attain two Ways:

What Property a Man may have in them.

E 1. **By** Induſtry and *Ratione loci.* *Ibid.*

F 2. **By** Taking or Taming of them, 7 *Rep.* 17. *b.* or by Hawks, *&c.* building upon his Trees. *Ibid.*

G **He** that hath the Land that lies on both Sides of a Highway, hath the Property of the Soil of the Highway in him, although the King hath the Privilege for his People to paſs through it at their Pleaſures; for the Law preſumes that the Way was at the firſt taken out of the Lands of the Party that owns the Lands that lie upon both Sides of the Way: *Mich.* 22 *Car. B. R.* By *Rolle*, it ſeems it is called the King's Highway, becauſe of the Privilege that the King hath in it for his People to paſs and repaſs through it, and not in reſpect of any Property he hath in the Soil itſelf; yet divers Lords of Manors do claim the Soil as Part of their Waſte.

Who hath the Property of the Soil of the Highway.

H **He** that hath the Goods of another Perſon delivered unto him to keep, hath a ſpecial Property in them, by Reaſon of the Delivery of them, and may

Delivery of Goods to keep, creates a ſpecial Property.

maintain an Action of Trover againſt a Stranger that ſhall take them out of his Poſſeſſion, or bring a Replevin for them, although they be not his own proper Goods: *Hill.* 22 *Car. B. S.* Becauſe an Action doth lie againſt him to whom they are firſt delivered by him that did deliver them, if he ſhall not re-deliver them when he is demanded to do it; and therefore it is Reaſon that he ſhould have a Property in them againſt all other Perſons whatſoever.

Every Man hath a Property to defend his Life, Liberty and Eſtate.

A **Every** Man (unleſs he hath forfeited it) hath a Property and Right which the Law allows him to defend his Life, Liberty, and Eſtate; and if it be violated, it gives an Action to redreſs the Injury, and puniſh the Wrong-doer.

To transfer Properties, is not *Malum in ſe*, but to violate it is.

B **To** alter or transfer Men's Properties is not *Malum in ſe*, but to violate Men's Properties is never lawful, but *Malum in ſe. Vaugh.* 338.

Legatee hath no Property in Goods before the Delivery.

C **A Legatee** of Goods hath no Property in the Goods bequeathed unto him before they be delivered unto him by the Executor or Adminiſtrator: *Mich.* 23 *Car. B. R.* For the Property of them is not altered by the Will, ſo long as they are in the Poſſeſſion of the Executor or Adminiſtrator; and it may be that there are not Aſſets to pay the Debts, and then the Delivery of them to the Legatee would be a *Devaſtavit* in the Executor or Adminiſtrator.

If the Sea carry away the Soil by Violence, the Owner ſhall have it.

D **If** the Sea, or a River, ſhall by violent Incurſion, and breaking forth, carry away the Soil of one, in ſo great a Quantity, that he that had the Property in the Soil, can know where his Land is, he ſhall have it; but if his Soil or Land be inſenſibly, or by little and little, waſted by the Sea or the River, he muſt loſe his Land: *Paſch.* 1656. *B. S.* 11 *Maii.* Becauſe he cannot prove which is his Land.

In what Caſe Goods in the Poſſeſſion of a Bankrupt ſhall be accounted his own.

E **If** one to ſupport the Credit of a Bankrupt, will ſuffer the Bankrupt to have his Goods in his Cuſtody, and make Uſe and diſpoſe of them, the Property of the Goods ſhall be accounted to be in the Bankrupt; and the other, upon a Trial for the Property of them, ſhall be judged to have loſt his Property in them: *Paſch.* 1751. *B. S.* 18 *Apr.* Becauſe by ſo doing he was a Cauſe in Part that others were deceived by the Bankrupt, whoſe Credit he ſupported, and therefore he is juſtly puniſhed for his fraudulent Dealing, to the Prejudice of others; alſo this ſhall be taken in the Eye of the Law to be a Fraud, there being no greater Badge of Fraud than Truſt.

A Carrier who hath a Special Property, may maintain Treſpaſs, or indict the Felon for ſtealing of his Goods; and ſo may the Owner.

F *B.* **a Carrier,** to whom Goods were delivered to carry, was robbed of theſe Goods in his Journey; and the Felon was indicted for ſtealing of the Goods of *B.* the Carrier, and held good; becauſe he had a Poſſeſſory Property in them, and might bring Treſpaſs for them, or indict the Thief: And ſo the

Indictment

Indictment is good for ſtealing of the Goods of the Carrier or right Owner. *Keilw. Rep.* 39.

Where a General, and where a Special Property in the ſame Thing.

A **If** I borrow Money and deliver Plate for the Security of it, the general Property is in me; but the Bailee hath a ſpecial Intereſt in it till the Money is paid. 2 *Leon.* Caſe 36.

Where Property ſhall be tried.

B **Where** Property comes in queſtion in the Spiritual Court, a Prohibition lies. 4 *Leon.* Caſe 261.

The Rector ſhall be intended to be Proprietor of the Tithes, 'till the Contrary appears.

C **The** Rector of a Pariſh-Church (if he hath read the thirty-nine Articles, which he muſt take Care to prove upon a Trial) ſhall be intended to be the Proprietor or Owner of the Tithes of the Pariſh, if the Contrary be not ſhewn: Becauſe generally, and by the Law, Tithes do belong to the Rector.

Where the Defendant pleads Property in a Stranger, he ſhall have a Return.

D **In** Replevin, the Defendant pleads Property in a Stranger, which is found accordingly; he ſhall have a Return without a Suggeſtion, in the Nature of an Avowry: For it appears by the Verdict, that the Plaintiff hath no Property. 2 *Lev.* 92.

Property in a Stranger is a good Plea in Replevin, in Bar, or Abatement, not in Treſpaſs; and why.

E **In** Replevin, Property pleaded in a Stranger is good, either in Abatement or Bar; becauſe the Cattle not being the Plaintiff's, the Defendant ſhall have a Return: But it is naught in Treſpaſs, becauſe it amounts but to the General Iſſue. 2 *Lev.* 92. *Carth.* 398.

Where a *Retorno Habendo* ſhall be awarded.

F **A** *Retorno Habendo* ſhall be awarded in every Caſe where it appears that the Defendant was in Poſſeſſion of the Cattle, if they be delivered by Replevin. *Cro. Jac.* 519.

What Property the Tenant hath in Trees.

G **A Tenant** hath not by Law any General Property in the Trees, but only a Special Property, ſo long as they remain Part of the Freehold demiſed; but as ſoon as they are ſevered, his Property is gone. 11 *Rep.* 82, 83.

When it veſts.

H **Where** it doth not veſt 'till the actual Delivery of the Goods in Poſſeſſion. 3 *Salk.* 62.

Dogs.

I **A Man** may have a Property in a Dog. *Ibid.* 140.

Execution.

K **Where** 'tis altered by the Seizure of Goods in Execution. *Ibid.* 159.

Juſtices of the Peace.

L **Where** Property is in Queſtion the Juſtices of the Peace have no Juriſdiction. *Ibid.* 217.

M **Of** the ſeveral Sorts of Property in Conies, Fiſh, and Deer, *&c. Ibid.* 291.

Property in a Stranger.

N **Property** of Goods pleaded in a Stranger, where well in Bar, and not in Abatement. *Carth.* 243.

Information.

O **After** Judgment upon an Information of Seizure of Goods as forfeited, the Property is diveſted out of the firſt Owner. *Ibid.* 323.

Of Things *Feræ Naturæ.*

A Man has the Property of Things killed in his own House *Feræ Naturæ* that are killed in his own Ground. *Salk.* 556. A

In Fish.

So one that has *Libera Piscaria* has Property in the Fish (& *Co. Litt.* denied) *Salk.* 637. *Q.* 357. 3 *Salk.* 189, 291. B

Negroes.

What Property a Man has in Villeins and Negroes. *Salk.* 666, 7. C

Difference in Property.

A Difference in Property of Things having a Natural Existence, and a Civil Existence only. *Ibid.* 667. D

Confession of Property.

Plea of taking by Distress for Rent does not confess Property, *&c.* *Vide Salk.* 640. E

Protection.

See **Privilege.**

Protection, what.

Protection is a Writ sued out of the Chancery, which lies where a Man will pass over the Sea in the King's Service; and by this Writ (when allowed in Court) he shall be quit of all Manner of Suits between him and any other Person, except Pleas of Dower, Assize of Novel Disseisin, Assize of Darrein Presentment, and Attaints, until his Return into England; and then there must issue out a Resummons against him. F

To whom the Protection of *B. R.* is allowed.

The Protection of this Court is allowed for any Person who attends his own Business in this Court, or attends by Virtue of any *Subpœna* from this Court. G

Granted for a Witness against a Prisoner for High Treason.

The Protection of the Court of the King's Bench was granted to protect a Witness, that was to give Evidence against a Prisoner for the late Protector, upon an Indictment of High Treason. H

Outlawed Person shall not be protected.

Note, In the Case of one vers. *Bright.* *Trin.* 1658. It was said by *Glyn*, Chief Justice, That if one be outlawed, this Court will not protect him from being taken upon the Outlawry, in coming and going from I from the Court if it be upon Buſineſs which concerns not that Outlawry; for it is no Reaſon that he that ſtands out in Contempt of the Law ſhould have any Protection by it.

A In an *Aſſumpſit*, a Protection under the Great Seal was brought into Court, for that the Defendant was in the Wars in *Flanders*; and it was allowed, though after an Exigent; but it ſhall not be allowed, after a *Capias Utlagatum*. 3 *Lev.* 332.

Writ of Protection ſhall be allowed in an *Aſſumpſit* after an Exigent, but not after a *Capias Utlagatum* executed.

B The King granted a Protection to one of his Debtors, until he was ſatisfied his Debt; and upon a Demurrer it was alledged, that by the Statute of 25 *Ed.* 3. *cap.* 19. theſe Protections are expreſly, That none ſhall be delay'd upon them; but the Party ſhall anſwer, and go to Judgment, and Execution ſhall ſtay: And the Court ordered here, That when it came to Execution they would adviſe, ſo a *Reſpondeas Ouſter* was awarded. *Cro. Jac.* 477. *pl.* 10.

A Protection pleaded, becauſe the King's Debtor.

25 Ed. 3. cap. 19.

Ordered, That the Plaintiff ſhould proceed to Judgment; and Execution to ſtay.

C A Protection obtained pending the Writ, is naught. *Latch.* 197.

It is naught pending the Writ.

D Alſo there ought to be a Cauſe ſhewn in a Protection for the granting of it. *Ibid.*

There ought to be a Cauſe ſhewn in it.

Proviſo in Deeds.

See **Expoſition of Writs.**

E **A Proviſo in a Deed is a Condition inſerted into a Deed, upon the Performance whereof the Validity of the Deed conſiſteth; and ſometimes it is only a Covenant** ſecundum ſubjectam materiam. **See the Lord** Cromwell's **Caſe,** 2 Rep.

A Proviſo, what.

A Proviſo may be taken ſometimes,

The ſeveral Acceptations of a Proviſo.

A
For
A Condition.
A Limitation.
A Covenant.
A Declaration.
A Foreprise, *ſecundum ſubjectam materiam.* Davis & Kemp. Carter *fol.* 3. See *Poph.* 27.

Where it amounts to a Covenant in a Deed.

B **A Proviſo** amounts to a Covenant in the Deed, when they are mutual Words of both Parties. See 2 *Rep.* 70.

It always implies a Condition.

C **A Proviſo** always implies a Condition, if there be not Words ſubſequent which may change it into a Covenant: Alſo it is a Rule, That where the Proviſo is, that the Leſſee ſhall perform or not perform a Thing, and no Penalty is to it; this is a Condition, otherwiſe it is void: But if a Penalty be annexed, *aliter eſt.* See *Cro. Eliz.* 248. *vide* 1 *Lev.* 155.

If a Proviſo be inſiſted on at a Trial, to deſtroy a Deed, it muſt be proved that the Thing provided to be done was done or not accordingly.

D **If** a Proviſo in a Deed be inſiſted upon at a Trial to deſtroy the Deed in which it is, there muſt be punctual Proof, That the Thing provided to be done, or not done, was done, or was not done, according as the Proviſo directeth: *Mich.* 1650. *B. S.* For the Law doth not favour the Deſtruction of Deeds or Eſtates, but doth favour the Supporting and Maintenance thereof, as much as may ſtand with the Rules of Juſtice, and therefore doth require ſtrict Proof of Things, the doing or not doing whereof goes to the Deſtruction of the Eſtate.

How it muſt be when it makes a Conditional Eſtate or Intereſt.

E **Where** it makes a Conditional Eſtate or Intereſt, it muſt have theſe three ſeveral Qualities.

F 1. **It** muſt not depend upon another Sentence, nor participate thereof; but ſtand originally of itſelf.

2. **It** muſt be the Words of the Bargainor, Feoffor, Donor, *&c.*

3. **That** it be compulſory to enforce the Bargainor, Feoffor, *&c.* to do ſuch an Act. 2 *Rep.* 70. *b.*

Where it makes a Covenant.

G **Where** a Proviſo makes a Covenant. 2 *Rep.* Lord *Cromwell*'s Caſe, 70, 71, 72, *&c.*

Where a Proviſo is, That the Leſſee ſhall do or not do ſuch a Thing, how it is.

H **It** is a Rule in Proviſoes, That where the Proviſo is, that the Leſſee ſhall do, or not do ſuch a Thing, and no Penalty is to it, this is a Condition; otherwiſe it is void. *Cro. Eliz.* 248. *pl.* 6. See *Cro. Car.* 128. *pl.* 3. 129.

A **If** a Proviſo be in the Negative, and makes a Reſtraint of the Common Law, it is a Condition. 3 *Leon.* Caſe 302.

Where a Proviſo makes a Condition.

B **Where** a Proviſo is a Parcel of the Sentence, which contains a Covenant, or abridgeth Parcel of the Covenant, there it doth not make a Condition, but an Exception. 4 *Leon. fol.* 73. See much of this Matter in *fol.* 70, 71, 72.

When it doth not make a Condition, but an Exception.

C **A Leaſe** for Years, Proviſo that the Leſſee ſhall not alien without Licence; the Leſſee deviſes it without Licence, this is a Breach of the Condition. *Cro. Eliz.* 60. *pl.* 2. and *fol.* 330, 331.

Proviſo not to alien, *ſans* Licence, is a Condition.

D **A Leaſe** for Life, Proviſo that he ſhall not take the Profits; or a Leaſe for two Years, Proviſo that he ſhall not occupy for one of the Years, is void. *Cro. Eliz.* 107. *pl.* 1.

Where a Proviſo ſhall be void.

E *A.* lets *B.* ſo many Rooms at ſuch a Rent, provided that *B.* ſhall gather the Rents of the Plaintiff's other Tenements mentioned in a Schedule, and pay them quarterly; and ſhews, to what the Rents in the Schedule amounted, and the Defendant hath not paid them: And held, that this is not a Covenant, but merely a Condition annexed to the Eſtate, which determined by not collecting and paying the Rents. *Cro. Car.* 128. *pl.* 3. 129.

Where a Proviſo is a Condition, and not a Covenant.

F **A Deviſe** to a Son and Heir; provided, and upon Condition, That if he do not pay 20 *l. per Ann.* to *B.* then *B.* to enter: This is but a Limitation, and not a Condition: For if it were a Condition, it would be void; becauſe no Perſon can enter for the Condition broken in a Deviſe, but the Heir at Law; and here the Eſtate is deviſed to him: And upon the Failure of Payment, then *B.* ſhall enter and have the Eſtate. And it is tantamount, as if he had deviſed the Lands to his eldeſt Son *quouſque* he ſhould make Default of the Payment of the 20 *l. per Ann.* *Borſton*'s Caſe, 3 *Rep.* 21. *a.* See *Carter* 171. And upon this Breach, or Nonperformance of this Limitation, the Deviſe to the Heir at Law ceaſes, and is veſted in *B.* without Entry or Claim.

Where a Limitation.

G **A Proviſo** will make an Eſtate to determine though there be no Words in it, that it ſhall be void, or to ceaſe. *Cro. Eliz.* 238. *pl.* 5.

Where it makes an Eſtate to ceaſe.

H **A Proviſo** by Way of Agreement to pay, amounts to a Covenant, and an Action well lies upon it. 1 *Lev.* 155. 2 *Rep.* 72.

When it is a Covenant.

I **Proviſo**, That if he be minded to revoke and declare his Mind in Writing under Hand and Seal, he may revoke: This is perſonal in the Party who is to revoke, and cannot be forfeited by any Treaſon committed by him. 1 *Lev.* 279. See a good Caſe upon this Matter. *Latch* 24, 25, *&c.*

What a Proviſo to revoke is.

How a Proviſo to make Leaſes ſhall be good, where the Eſtate paſſes by Tranſmutation of Poſſeſſion, and where of Eſtate.

A **How** a Proviſo to make Leaſes ſhall be good, and where not, where the Eſtate paſſes by Tranſmutation of Poſſeſſion, and where by Tranſmutation of Eſtate. 1 *Lev.* 30. See 1 *Rep.* 176. *b.*

Proviſo to make Leaſes, where void.

B **When** Uſes are raiſed by Covenant, in Conſideration of Paternal Love to his Sons or Daughters, and for Advancement of his Blood; and after, there is a Proviſo, That the Covenantor for good Cauſes may make Leaſes for Years; the Covenantor cannot make Leaſes for Years to his Sons or Daughters, or any of his Blood, or any other Perſon; becauſe the Power to make Leaſes for Years is void, when the Indenture was ſealed; for the Covenant upon ſuch general Conſideration cannot raiſe an Uſe. 1 *Rep.* 176. *b.*

And where not.

C **Note,** If the Uſes had been limited upon a Fine, Recovery or Feoffment, they had been good, becauſe of the Tranſmutation of the Eſtate; for thoſe Uſes ariſe without Conſideration.

A Proviſo, that the Eſtate ſhall ceaſe upon a Diſturbance of his Executors, is good.

D **A Proviſo** in a Deed, That if his Son ſhall diſturb the other Uſes, or not ſuffer the Executors quietly to carry away the Goods; that then the Term of ſixty Years to him, and the Uſes to the Heirs of his Body, ſhall ceaſe and be void. The Words of this Proviſo are ſufficient to ceaſe the Uſe for ſixty Years, and alſo to the Heirs of his Body. 8 *Rep.* 90. *a.* 91. *a.* And what Act ſhall be a Diſturbance. *Ibid.*

Where it is neither a Condition nor Covenant.

E **A Proviſo** of itſelf in a Deed which hath not any perfect Sentence annexed to it, is neither a Condition or Covenant. *Cro. Eliz.* 385.

F **Where** it makes a Covenant and where a Condition. 3 *Salk.* 102.

G **Of** Trying a Cauſe by Proviſo. *Ibid.* 362.

Vide poſtea, Title **Trial.**

Purchaſe and Purchaſor.

A **Purchaſe is a Title that a Man hath to Lands or Tenements, either by his own Act or Agreement, or elſe by Gift, Deviſe, &c. and not by Diſcent from any of his Anceſtors, or of his Couſins, but by his own Deed.** Lit. Sect. 12.

Purchaſe, what.

B **An** Alien cannot purchaſe Lands in *England*, becauſe by this Means the Realm would be impoveriſhed by tranſporting the Treaſure from hence into foreign Countries; and by putting thereby Part of the Lands of this Realm, that is to ſay, the Lands purchaſed by the Alien, under the Power of a foreign Prince: *Paſch.* 23 *Car. B. R.* For not only the Subjects Perſon, but his Eſtate alſo is in a Sort under the Power of his Prince.

An Alien cannot purchaſe, and why.

C **Every** Purchaſor ought at his Peril to take Notice of the Eſtates and Charges, which are upon the Land which he Purchaſes; for the Law preſumes, That no Man will purchaſe Lands without Advice of Counſel. 2 *Leon.* Caſe 89.

Every Purchaſor purchaſes at his own Peril.

D **What** Judgments ſhall affect Purchaſors, and what not; ſee ſeveral Acts in Title **Judgments.** See the Statute of 4 & 5 *W. & M. cap.* 16. Intituled, *An Act to prevent Frauds by clandeſtine Mortgages.* See the Statute 3 & 4 *W. & M. cap.* 14. Intituled, *An Act for Relief of Creditors againſt fraudulent Deviſes.* See the Statute of 4 & 5 *W. & M. cap.* 20. *For Docketting of Judgments.* See Title **Deviſes**, and Title **Heir.**

What Judgments ſhall affect Purchaſors, and what not.

See the ſeveral Statutes.
4 & 5 **W.** & **M.** cap. 16.
3 & 4 **W.** & **M.** cap. 14.
4 & 5 **W.** & **M.** cap. 20.

E **Where** an Eſtate comes to a Man from his Anceſtors without Writing, that is a Diſcent: But where a Man takes any Thing from an Anceſtor, or any Perſon, by Deed, Will, or Gift only, and not as Heir at Law; that is a Purchaſe.

The Difference between a Diſcent and a Purchaſe.

F **It** is a Rule in Law, That when an Eſtate is limited to an Anceſtor for Life, the Word *Heir* after cannot be taken for a Word of Purchaſe. 2 *Lev.* 60.

The Word *Heir* cannot be taken for a Word of Purchaſe, where an Eſtate for Life is limited to the Anceſtor.

What Heir muſt take by Purchaſe.

A **None** can take as Heir by Purchaſe which is not a right Heir; nor by Diſcent, where the Eſtate was never executed in the Anceſtor. 2 *Lev.* 79.

An Infant ſhall not have his Age when he takes by Purchaſe.

B **Where** an Infant takes by Purchaſe, he ſhall be bound by a Condition, without Notice. 2 *Lev.* 21. See Title **Infant.**

Where the Chancery will relieve Purchaſors of a Term againſt a Dormant Title.

C **The** Chancery will relieve the Purchaſor of a Term againſt a Dormant Title, when Money hath been laid out upon Improvement. 2 *Lev.* 152.

Deviſee for Payment of Debts ſells the Land, the Purchaſor is not bound to ſee the Money laid out.

D **Land** is deviſed for the Payment of Debts, and the Deviſee is made Executor: The Purchaſor is ſafe in paying of his Money to the Deviſee, and is not obliged to ſee the Money applied for the Payment of the Debts.

Remainder to the eldeſt Child, is a good Name of Purchaſe.

E **To** a Man and his Wife for their Lives, Remainder to the Uſe of the eldeſt Child of his own Body in Tail; the Wife dies without Iſſue, he marries again and hath Iſſue a Daughter, and then a Son. Firſt Point, Whether eldeſt Child is a good Name of Purchaſe by Way of Remainder, he not being *in eſſe?* And held, That it was good; for a Perſon not *in eſſe* at firſt, may take a Remainder by Purchaſe, if he be *in eſſe* before the particular Eſtate ends: Alſo that the Remainder ſhall be in Abeiance until the Birth of the Child.

Where one may take though not a compleat Heir.

F **An** Heir, who is not ſo properly, and a compleat Heir, may take as a Purchaſor by the Intent of the Parties. 2 *Lev.* 79. *Per Hale.*

Where the Heir ſhall take by Diſcent, and not by Purchaſe.

G *A.* ſeized of Lands, *ex parte materna*, deviſes them for ſixteen Years, for the Payment of his Debts, and after to *J. S.* who is Heir *ex parte materna: J. S.* ſhall take by Diſcent, and not by Purchaſe. 3 *Lev.* 127.

Iſſue and Baſtard are both good Names of Purchaſe.

H **Iſſue** is a good Name of Purchaſe. *Moore*, Caſe 602. So alſo is Baſtard. *Ibid.*

Purchaſor and Purchaſe.

I **Who** is a Purchaſor, and what is a Purchaſe. *Mod. Caſes in Law and Equity* 170, 176, 177.

Title againſt a Purchaſor.

K **Where** a Perſon, knowing his own Title, does not give Notice of it to a Purchaſor, he ſhall never ſet it up againſt the Purchaſe. *Ibid.* 35.

Heir.

L **The** Difference where the Heir takes by Purchaſe, and where by Deſcent. 3 *Salk.* 392.

The like.

M **Where** the Name *Heirs* is a Name of Purchaſe, and not of Limitation. *Ibid.*

The like.

N **Where** the Heir ſhall take by Purchaſe, where by Deſcent. *Carthew* 273.

Quae eſt eadem.

See { **Juſtification.** **Pleas.**

A **Q**UÆ eſt eadem, **in Pleading, ſometimes ſupplies the want of a Traverſe.**

Quæ eſt eadem, what.

B **In** a *Clauſum fregit* ſuch a Day, the Defendant pleads the Plaintiff's Licence to enter on the ſame Day, and that *virtute inde* he entred; he need not ſay, *Quæ eſt eadem tranſgreſſio*. 21 *H.* 7. *fol.* 39. *a. pl.* 52.

Where *Quæ eſt eadem tranſgreſſio* muſt be pleaded in a Juſtification in Treſpaſs, and where not.

C **So** in Treſpaſs for taking of Goods, if the Defendant juſtifies the ſame Day and Place. *Ibid.*

D **So** in Treſpaſs and Battery, if the Defendant juſtifies that the ſame Day and Place the Plaintiff aſſaulted him, and that what Damages happened to him was of his own Wrong; this is good without *Quæ eſt eadem tranſgreſſio*; yet he doth not directly anſwer the Aſſault ſuppoſed by the Plaintiff. *Ibid.*

E **But** where he juſtifies at another Day, or other Place, then he ought to ſay, *Quæ eſt eadem*. *Ibid.*

Where it muſt be.

F **A Fact** laid to be *Nov.* 1. and a Juſtification *Nov.* 2. *Quæ eſt eadem*, is good without a Traverſe, the Day not being material; but it had been naught if the Day had been material. 1 *Lev.* 241.

Where good without a Traverſe.

G **Juſtification** in Treſpaſs *Quæ eſt eadem*, with a Traverſe of the Place, without a Traverſe of the Time, where good. 3 *Lev.* 227.

Traverſe of the Place without Traverſe of the Time, where good.

H **Where** *Quæ eſt idem reſiduum tranſgreſſion'* is not good. *Lutw.* 1486.

Where *Quæ eſt idem reſiduum tranſgreſſion'* is not good.

I **If** a Treſpaſs be alledged 10 *Nov.* and Juſtification the 11th of *Nov.* yet if there be an Averment of *Quæ eſt eadem*, it is good without a Traverſe. *Lutw.* 1457.

Where a Juſtification without a Traverſe, if there be an Averment.

K **Where** you juſtify *dicto tempore* in the Declaration, you need not to ſay *Quæ eſt eadem tranſgreſſio*; becauſe you agree with the Plaintiff in the Time and Place mentioned in his Declaration, and give an Anſwer to it. *Mich.* 5 *W.* & *M. B. R.*

Where you juſtify *dicto tempore*, you need not ſay, *Quæ eſt eadem.*

Treſpaſs

Where a Juſtification without *Quæ eſt eadem*, is good.

Treſpaſs and Aſſault ſuch a Day and Place: The A Defendant ſaith, That the ſame Day and Place he arreſted the Plaintiff by a Warrant; and held good, without ſaying of *Quæ eſt eadem tranſgreſſio*; becauſe the Defendant agrees with the Plaintiff, and anſwers him: But if he had juſtified at another Day or Place, then the Concluſion ought to be *Quæ eſt eadem tranſgreſſio*. Kitch. 237.

Battery in one County, and Juſtification of putting of him out of the Poſſeſſion of his Houſe in another County, *Quæ eſt eadem*, &c. is good.

Otherwiſe where the Action was Treſpaſs and Aſſault only.

Treſpaſs and Aſſault in *London*: The Defendant B juſtifies *molliter manus impoſuit*, to put him out of Poſſeſſion of his Houſe in *B. in Com. B. Quæ eſt eadem*, &c. and held a good Plea; becauſe the Juſtification is local, *viz.* The maintaining of his Poſſeſſion: But if it had been an Action of Battery, and the Defendant had juſtified by reaſon of an Aſſault C in another County, and traverſed the County in the Declaration, it had been ſtark naught; becauſe the Action of Battery only, without the Juſtification of the Poſſeſſion of the Houſe, is perſonal and tranſitory; and if the Battery was committed at *York*, it was committed in *London*. *Cro. El.* 705. and 842.

Quaere.

One under Arreſt may not enter into Bond to the Plaintiff for his Appearance.

ONE that is under an Arreſt may not make D an Obligation to the Plaintiff at whoſe Suit he was arreſted for his Appearance to his Action; (*Paſch.* 24 *Car. B. R. Paſch.* 1648. *B. S.* in *Leach* and *Davies* Caſe) becauſe if the Bond ſhould be ſued, the Defendant may plead the Statute of *Hen.* 6. thereunto.

If Leſſee for Years cuts down Timber, Trover and Converſion lies for Leſſor.

If a Leſſee for Years cuts down Timber upon the E Land let unto him, and carries it away from off the Ground, the Leſſor may well bring an Action of Trover and Converſion for the Timber; (*Mich.* 24 *Car. B. R.*) becauſe immediately upon the Severance from the Freehold, the Law caſts the Property on the Leſſor, which is called a general Property; but whilſt it ſtood the Leſſee had a ſpecial Property for Shadow and Maſt, *&c.* for his Cattle, which being cut down, his ſpecial Property is gone, and only the general Property left.

Whether a Fine levied of Land ſhall extend to a contingent Uſe.

Whether a Fine levied of Land ſhall extend to F a contingent Uſe of that Land. (*Mich.* 24 *Car. B. R.* In *Thomas* and *Kemiſhes* Caſe) It ſeems not, for the Uncertainty of the happening of it.

Quare Impedit.

A **Quare Impedit is a Writ which lies where a Man hath an Advowſon, and the Incumbent dies, and another preſenteth his Clerk, or diſturbs me to preſent, I ſhall have this Writ.**

Quare Impedit, what.

B **Where** the Writ is *ad præſentandum ad eccleſiam*, it intends the Right of the Advowſon and Parſonage: But when the Title is to the Vicarage only, there is a ſpecial Writ *ad præſentandum ad vicariam. Cro. Car.* 74. *pl.* 3. *Litt. Rep.* 50.

How the Writ is to be where it is brought for a Parſonage, and how for a Vicarage.

C **The** Plaintiff in his Count in a *Quare Impedit*, muſt alledge a Preſentation in himſelf, or in thoſe from whom he claims, *Vaugh.* 7, 8, 17, 57. So likewiſe muſt the Defendant, becauſe they are both Actors. *Ibid.* 7, 8, 57, 60.

How the Count to be.

How the Defence to be.

D **You** muſt in your Count alſo ſhew a Diſturbance before the Writ brought. *Hob.* 199.

A Diſturbance muſt be ſhewn in a Count upon a *Quare Impedit* before the Writ brought.

E **The** Points to be enquired of in a *Quare Impedit* by the Jury at a Trial.

The Points to be enquired of in a *Quare Impedit.*

F Firſt, **If** the Church be full or void.

Secondly, **If** full, then of whoſe Preſentation it is full.

Thirdly, **The** Annual Value of the Church; and this is not *ex officio* at Common Law, but by the Statute of *Weſtm.* 2. 6 *Rep.* 51. *a.*

Stat. Weſtm. 2.

Fourthly, *Si tempus Semeſtre tranſivit* after the Avoidance. 6 *Rep.* 49.

G **The** *Tempus Semeſtre* ſhall be ſix Calendar Months. 6 *Rep.* 61. *b.* 62.

The *Tempus Semeſtre*, how computed.

H *Frowick* in *Keilw.* 57. adds another Article, *viz.* For what Time the Church hath been full. See the Judgment in *Quare Impedit* there, and 6 *Co. Rep. Boſwell*'s Caſe.

Another alſo.

I **A** *Quare Impedit* was brought againſt the Archbiſhop, Biſhop and Clerk, and Proceſs continued until the Grand Diſtreſs returned, at which Day all the Defendants made Default; whereupon the Plaintiff made a Title to the Patronage to have a Writ to the Biſhop, and a Writ of Inquiry of Damages was awarded to inquire.

Judgment againſt the Defendant by Default after the Grand Diſtreſs returned.

A Writ of Inquiry awarded.

The Points to be inquired of.

Et de valore Eccleſiæ. A

Et quantum temporis elabitur a tempore quo Eccleſia illa incepit vacare.

Et ſit plena, necne.

Et ſi ſit plena, tunc ad cujus vel quorum præſentationem Eccleſia illa exiſtit, & inquiſitionem quam, &c.

The Judgment.

B **And** all theſe Points were found upon the Writ of Inquiry; and thereupon the Plaintiff had Judgment to recover his Damages, and his Preſentment. *Benl.* 137, 138. *Dyer* 241. *p.* 48.

For pleading in a *Quare Impedit.*

C **For** pleading in a *Quare Impedit,* and how to take a Traverſe upon a Traverſe in pleading, ſee *Hob.* from *fol.* 101. to 105. And where to plead the general Iſſue, *fol.* 103.

What Defendants and Diſturbers.

D **It** is adviſeable in a *Quare Impedit* to name no more than needs muſt; nor more Diſturbers than are likely to have reaſonable Titles. *Hob.* 320.

How a Parſon muſt plead.

E **A Parſon** cannot plead generally, but muſt ſay of whoſe Preſentation. *Hob.* 322.

The Writ muſt name the Patron, or it muſt abate.

F **A** *Quare Impedit* brought againſt the Biſhop and Incumbent, without naming of the Patron, ſhall abate. 7 *Rep.* 25. *b.*

Nonſuit or Diſcontinuance after Appearance, peremptory, and why.

G **If** the Plaintiff after Appearance in a *Quare Impedit* be nonſuited, it is peremptory: Becauſe the Defendant upon a Title made (whereby he becomes Actor) ſhall have a Writ to the Biſhop: So likewiſe in caſe of a Diſcontinuance. 7 *Rep.* 27. *b. Salk.* 539.

How the Writs are to be directed, where the two Archbiſhops are Plaintiffs.

H **If** the Archbiſhop of *Canterbury* be Plaintiff in a *Quare Impedit,* the Writ muſt be awarded to the Archbiſhop of *York:* So where the Archbiſhop of *York* is Plaintiff, it muſt be awarded to the Archbiſhop of *Canterbury. Show. Rep.* 329, 330.

For *Quare Impedits,* &c.

I **See** *Boſwell*'s Caſe, 6 *Rep.* from *Fol.* 48 to 53. for *Quare Impedits,* and Uſurpations, Admiſſions, Inſtitutions and Inductions.

How to count in a *Quare Impedit.*

K **Where** a Man ſhews a precedent Right, and then alledges a Preſentation in purſuance to that Right, it need not to be alledged to be *tempore pacis:* But where no Title is alledged, ſo that the Preſentation only makes the Title, there it muſt be ſaid to be *tempore pacis.* 1 *Mod.* 230.

What the Judgments in a *Quare Impedit* are.

L **There** are two Judgments in a *Quare Impedit:* One, That the Plaintiff ſhall have a Writ to the Biſhop; and this is the final Judgment that goes to the Right between the Parties, and is the Judgment at the Common Law: The other Judgment is to be given for Damages, ſince the Statute of *Weſtm.* 2. *cap.* 5. after the Points of the Writ are inquired into, which Judgment is not to be given, but at the Inſtance of the Party. 1 *Mod.* 254, 255.

Weſtm. 2. cap. 5.

A **The** Plaintiff in a *Quare Impedit* muſt recover by his own Strength, not by the Defendant's Weakneſs. *Vaugh.* 8, 38, 60.

How the Plaintiff muſt recover.

B **Where** the King or a common Perſon in a *Quare Impedit* ſets forth a Title, which is no more than a bare Suggeſtion, he ſhall not then forſake his own and endeavour to deſtroy the Defendant's Title. *Vaugh.* 61.

Where the Plaintiff ſhall not forſake his own Title to deſtroy the Defendant's.

C **Where** in a *Quare Impedit* a Title appears to the King upon the Record, the Court will award a Writ for the King; *aliter* where the Title appears to the King upon Evidence. *Moore*, Caſe 1214.

Where the Court will award a Writ for the King, and where not.

D **In** all *Quare Impedits* the Defendant may traverſe the Preſentation alledged by the Plaintiff, if the Matter of Fact will bear it; but the Defendant muſt not deny the Preſentation alledged, where there was a Preſentation. *Vaugh.* 16, 17.

Where the Preſentation may be traverſed, where not.

E **Where** the Preſentation, and not the Seiſin in Groſs, or Appendancy, is traverſable. *Vaugh.* 10, 11, 12, 13. And where the Seiſin in Groſs or Appendancy is traverſable. *Ibid.* 12.

Where in Groſs is traverſable, and where not.

F **It** was ſaid by the Counſel, That in a *Quare Impedit* the Preſentment ought always to be alledged in him who hath the abſolute Inheritance, and not in any other. *Cro. Eliz.* 518.

The Preſentmeut to be alledged in him who hath the Inheritance.

G **Where** a Preſentment is alledged in the Grantor and Grantee, the Preſentment in the Grantor is only traverſable, for that is the Principal. *Cro. El.* 518. *pl.* 44. See 5 *Rep.* 97. *a.* 98. *a.*

Where the Preſentment is only traverſable.

H **A double** Uſurpation ſhall bind the King that he may not have a *Quare Impedit*; for the King as to the Advowſon hath no greater Privilege than a common Perſon. *Cro. Jac.* 53, 54. But afterwards this Judgment was reverſed for this Cauſe, and adjudged, That two or three Uſurpations gains not ſuch a Poſſeſſion upon him, but that he may preſent upon Avoidance, or may grant it. *Cro. Jac.* 123. *pl.* 8.

A double Uſurpation ſhall bind the King, and why.

But afterwards adjudged, that it ſhould not.

I **Uſurpations** ſhall bind the Biſhop who ſuffers them, not his Succeſſors. *Cro. Jac.* 623. *pl.* 6.

An Uſurpation ſhall bind the Biſhop who ſuffers it, not his Succeſſor.

K **Where** the Parſon, Patron and Ordinary are ſued, and the Ordinary diſclaims, and the Parſon loſeth by Default, the Plaintiff ſhall have Judgment to recover his Preſentation, and a Writ to the Biſhop to remove him, with a *ceſſet executio*, until the Plea is determined between the Plaintiff and Patron. *Vaugh.* 6.

Judgment with a *ceſſet executio.*

L **The** Clerk is not bound to ſhew the Biſhop his Orders, but the Biſhop may examine him upon Oath, whether he hath Orders, or not; and as to

The Clerk not bound to ſhew his Orders.

the

the Letters Teſtimonial of his Good Behaviour and Sufficiency, the Biſhop ought to examine that himſelf; and if he defer the Admiſſion becauſe he is not reſolved therein, he is a Diſturber, if the Clerk come to him in convenient Time; and the Biſhop cannot refuſe a Clerk for want of Letters Teſtimonial. 1 *Leon.* Caſe 312.

Where the Biſhop cannot refuſe a Clerk.

What traverſable.

In a *Quare Impedit* the Seiſin is not traverſable, but the Preſentment. *Skin.* 657. A

How far a Non-denial is an Admiſſion.

The conſtant Courſe in a *Quare Impedit* is to alledge Seiſin generally; the Time of Seiſin is immaterial, and if it be not material the not denying of it is no Admiſſion, for Non-denial is only an Admiſſion of Things materially alledged. *Ibid.* 660. B

Plenarty.

Plenarty is no good Plea therein to bar the King's Right. *Mod. Caſes in Law and Equity* 8. C

How to declare.

A *Quare Impedit* is a poſſeſſory Action in which the Plaintiff muſt always declare upon his Poſſeſſion. 3 *Salk.* 293. D

Counter Plea.

The Biſhop can never counterplead the Plaintiff's Title without making a Title to himſelf, either as Patron or by Lapſe, for otherwiſe he hath nothing to grant Inſtitution. *Ibid.* E

Incumbent.

Of the Plea of an Incumbent in a *Quare Impedit. Ibid.* F

Pleadings.

Where the pleading a *Quare Impedit* was held not to be good. *Carthew* 312. G

Jointenants.

In a *Quare Impedit* the Plaintiff declares on an Agreement by Indenture between Jointenants to preſent by Turns. *Salk.* 43. H

Compoſition.

And ſee how a Compoſition or Agreement to preſent by Turns may be made. *Salk.* 44. I

Prerogative Turn.

In Caſe of a prerogative Turn the Writ is general *quæ ad noſtram ſpectat' donationem. Ibid.* 559. K

Seiſin.

'Tis ſufficient to lay a Seiſin *tempore pacis tempore Domini Regis. Ibid.* 561. L

Quaſhing of Indictments, Orders, &c.

B. R. may quaſh Indictments, Orders, &c.

A This Court hath Authority to quaſh Orders of Seſſions, Preſentments, Indictments, &c. made in inferior Courts, or before Juſtices of the Peace, or other Commiſſioners, if there be Cauſe; that is, if they be defective in Matter or Form. (*Mich.* 22 *Car.* 1. *B. R.*) To quaſh comes of the *French* Word *Caſſer*, which ſignifies to break in Pieces, to cancel, deſtroy, make null or void. But this quaſhing is but by Favour of the Court; for the Court is not tied *ex officio* to do it, but may leave the Party to plead unto them, and to take Advantage of the Inſufficiency of them by pleading to them, as in many Caſes they uſe to do, although they know the Indictments to be inſufficient, *viz.* where the Indictment is for ſome Offence much prejudicial to the Commonwealth.

Derivation of the Word.

The Court is not bound to quaſh Indictments, &c.

B **In** the Caſe of *Wells* and *Wells* (*Hill.* 1658. *B. S.*) it was ſaid by *Glyn* Chief Juſtice, That a Sheriff that makes an ill Return cannot move to quaſh it, tho' it was made upon a Miſtake; but muſt make a better, or elſe he is to be amerced. See Title **Reſcous.**

A Sheriff cannot move to quaſh an ill Return.

C **An** Indictment may be quaſh'd for falſe *Latin*, or for having in it inſenſible Words, or *Engliſh* Words, or for Defect in the Form of it. *Trin.* 23 *Car.* 1. *B. R.*

Reaſons for quaſhing an Indictment.

D **The** Court will not quaſh an Indictment of Forcible Entry after a Verdict found upon the Indictment againſt the Defendant, before hearing of both the Parties concerned in the Cauſe. (*Mich.* 23 *Car. B. R.*) For the Court hath regard to Verdicts, and will not make them fruitleſs without very good Cauſe ſhewn.

Indictment of Forcible Entry may not be quaſh'd after Verdict.

E **The** Court will not quaſh an Information for a Fault in the Body of it, but will leave the Defendant to demur unto it, if he believe it to be inſufficient; but it is otherwiſe of an Indictment. (*Paſch.* 1650. *B. S.* 24 *Maii.*) It ſeems it is becauſe Informations are uſually preferred for greater Offences than Indictments, and upon more ſolemn Advice.

The Court will not quaſh an Information for a Fault in the Body of it; but Defendant muſt demur.

Que Eſtate.

See **Preſcription.**

In what a Man may plead a *Que Eſtate*.

A **Man** cannot plead a *Que Eſtate* in an Eſtate-tail, or for Life, or Years; becauſe no Man can have his Eſtate: For if Tenant in Tail grants *Totum Statum*, this is good during his Life only, and the Grantee may plead this, and aver the Life of the Tenant in Tail; but he cannot plead it by a *Que Eſtate*. 1 *Rep*. 46. *a*. A

Not for a Thing in groſs.

A Man cannot preſcribe in a *Que Eſtate* for a Thing in groſs. *Cro. El.* 763. *pl*. 1. *Cro. Jac*. 673. *pl*. 5. B

Nor without ſhewing of the Deed.

A Man cannot ſhew a *Que Eſtate* without ſhewing the Deed how he came by it. *Cro. Jac*. 673. *pl*. 5. C

A *Que Eſtate* in the Leſſee, which ſhould have been in the Lord.

Lutw. 81. **A** *Que Eſtate* was alledged in the Leſſee, which ſhould have been, That the Lord in Fee of the Manor, and all thoſe whoſe Eſtates he hath, have Time out of Mind had Common for their Tenants and Farmers, *&c*. and therefore it was ill. D

None but Tenant in Fee can preſcribe in a *Que Eſtate*.

No Perſon can preſcribe in a *Que Eſtate*, but Tenant in Fee-ſimple. *Goldsb*. 198. E

A Copyholder cannot preſcribe in a *Que Eſtate*.

A Copyholder cannot preſcribe in a *Que Eſtate*. 5 *Mod*. 206. F

A *Que Eſtate* cannot be pleaded for a Thing that lies in Grant, but by Inducement.

It is not ſufficient to plead a *Que Eſtate* of a Thing which lies in Grant, unleſs it be by Inducement only. *Carter* 32. 2 *Mod*. 144. See 10 *Rep*. 59. *b*. G

When, where and how a *Que Eſtate* is to be pleaded.

When, where and how, a *Que Eſtate* is to be pleaded. 3 *Lev*. 19. and where not. *Keilw*. from *fol*. 4. to *fol*. 20. *a*. H

A *Que Eſtate* not to be in a Leſſee for Years.

Preſcription by a Tenant, who is Leſſee for Years, in a *Que Eſtate*, is naught. *Lut*. 81. and how it ought to be. *Ibid*. *Note*, The Reaſon why a *Que Eſtate* of a Term cannot be pleaded, is, becauſe a Term cannot be gained by Diſſeiſin, as a Fee may; nor by Occupancy as a Freehold; but by meſne Aſſignments. I

How it may be pleaded in a Stranger.

A Man may plead a *Que Eſtate* in a Stranger, becauſe he cannot know his Title: But he cannot K plead a *Que Eſtate* in himſelf, or thoſe under whom he claims; for there he muſt ſet forth the meſne Aſſignments. 1 *Lev.* 190.

A **Covenant** upon a Leaſe made by the Queen to *A. B.* and makes a Title to the Reverſion of the Term by divers meſne Conveyances, and brings the Term to the Defendant by a *Que Eſtate* he hath by divers meſne Conveyances: Here the pleading of a *Que Eſtate* in a Term in another Perſon, under which he doth claim, but is a Stranger, is good; becauſe he is not privy to the Eſtate and Conveyance of a Stranger: But to plead a *Que Eſtate* in himſelf in a Term, or in another under whom he claims, is not good. 1 *Lev.* 19.

Where a Title to a *Que Eſtate* in a Term in another is good.

B **A Man** cannot preſcribe by a *Que Eſtate* of a Rent, Advowſon, Toll, *&c.* but he may of a Manor to which theſe are Appendant. 2 *Mod.* 144.

A Man may preſcribe to a *Que Eſtate* in a Manor, but not an Advowſon.

C **A Thing** that lies in Grant cannot be claimed by a *Que Eſtate* directly by itſelf, but it may be claimed as appurtenant to a Manor by a *Que Eſtate* in the Manor. 1 *Mod.* 232. 2 *Keb.* 311. *pl.* 17.

A Thing that lies in Grant cannot be preſcribed for in a *Que Eſtate* directly of itſelf.

D **In** caſe of a Common or Rent, which paſſes by Deed only: If the Plaintiff ſhew a *Que Eſtate*, he muſt produce the Grant of it; but need not where he preſcribes for a Way: Becauſe it is but a Conveyance to the Action, which is grounded upon the Diſturbance done to the Poſſeſſion. 3 *Mod.* 52. *Cro. Car.* 575.

Where a *Que Eſtate* may be claimed by Deed, and how by a Preſcription.

E **Though** the Plaintiff in Debt for Rent may plead a *Que Eſtate* in the Defendant generally, without ſhewing how; yet where a Man claims under a *Que Eſtate*, there he ought to ſhew the ſeveral Aſſignments, for the Defendant may traverſe any of them. *Skin.* 303.

Traverſe.

F **In** Replevin the Defendant avows, the Plaintiff replies in Bar to the Avowry, and ſays, that King *James* was ſeiſed and granted to Sir *R.* who granted to *J. S.* and the *Que Eſtate* by divers meſn Aſſignments came to *J. D.* and he put in his Beaſts, to which Plea there was a Demurrer; and it was ruled for the Avowant, for the Plaintiff ought to ſhew that he put in his Cattle by the Licence of *J. D.* and ſhou'd therefore derive a Title to him. *Ibid.*

Title in Replevin.

G **A Preſcription** by a *Que Eſtate* is not good of a Term for Years. *Carthew* 432.

Term for Years.

H **A Termor** for Years cannot declare on a *Que Eſtate*. *Salk.* 363.

The like.

I **In** making Title, the Commencement of particular Eſtates muſt be ſhewn. *Ibid.* 562.

Particular Eſtates.

K **A Diverſity** therein between Counts and Avowries. *Ibid.*

Counts and Avowries.

Qui tam Suits, See **King**.

Quod permittat.

Quod permittat proſternere, what.

QUod permittat **is a Writ which lies againſt any Perſon who erects a Building, tho' upon his own Ground; yet ſo near to the Plaintiff's Houſe, that it hangs over it, or elſe what he erects becomes a Nuſance to it.** A

How to count upon this Writ.

How to count upon the Writ of *Quod permittat*. See 9 *Rep*. 53, 54. B

Quod permittat by Grantee of the Reverſion, againſt the Grantee of the Tort-Feazor.

A Man erected upon his own Ground a Houſe ſo near the Defendant's, that it hung over three Foot: The Man who had the Injury grants away his Houſe; then he who erected the Nuſance granted away his; and held, that the diſtilling of the Water in the Time of the Grantee of the Houſe was a new Tort: So that the Continuance of the Injury by the Tort-Feazor and his Feoffee to the Prejudice of another, ſhall be puniſhed by the Feoffee of the Houſe. 5 *Rep*. 100. *b*. 101. *a*. C

Where a Requeſt muſt be made to remove a Nuſance.

Where a Son upon Requeſt made (not without a Requeſt) doth not remove the Nuſance committed by his Father, a *Quod permittat* lies againſt him. 5 *Rep*. 101. D

Proſternere edificia.

See a *Quod permittat proſternere quædam edificia quæ* A. B. *defunct' levavit*, &c. Lutw. 1586. Who ſhall have it, againſt whom it lies, and where it ſhall be good. *Ibid*. E

For ſtopping up of Lights.

See a Count in a *Quod permittat* for ſtopping up of Lights. *Lutw*. 1586, 1587. F

Weſt. 2. cap. 24.

It extends not to the Alienee of an Aſſignee, *per* Statute of *Weſtm*. 2. *cap*. 24. *Lutw*. 1588. G

Quo Warranto.

See { **Franchiſes.**
{ **Preſcription.**

A **Where a Man uſurps, and makes uſe of any Franchiſe that he hath no Right unto, then lies this Writ of Quo Warranto, to ſhew by what Title he claims them.**

Quo Warranto, what.

B A *Quo Warranto* was brought for Vexation, upon forty-eight Points; and the Court being moved in it, did order that the Proſecutor ſhould wave that *Quo Warranto*, and ſhould bring a new one, and therein inſiſt only upon three Points, but that he might proceed to a Trial upon his new *Quo Warranto*, in ſuch Time as he might have done upon the old, (*Hill.* 22 *Car. B. R.*) to the end he might not be delayed in his Proceedings by bringing of the new *Quo Warranto*.

Quo Warranto upon forty-eight Points; the Court order'd the Proſecutor to bring a new one, and inſiſt only on three.

C If ſeveral Privileges are granted in a Charter, and there is a Forfeiture of the Charter, for an Abuſer of one of the Privileges, and a *Quo Warranto* is brought and Judgment upon it, this is a Forfeiture of the whole Charter.

Abuſer of one Privilege is a Forfeiture of the whole Charter.

D By a Statute made 9 *Annæ*, it is enacted, That if any Perſon ſhall intrude into, uſurp, or unlawfully hold any Office or Franchiſe in any Corporation or Borough, then the proper Officer in the Queen's Bench, the Seſſions of the County Palatine, or Grand Seſſions in *Wales*, to exhibit an Information in the Nature of a *Quo Warranto* at the Relation of the Perſon deſiring to proſecute the ſame, and who ſhall be therein mentioned to be a Relator againſt ſuch Perſon ſo uſurping, intruding into, or unlawfully executing of ſuch Office or Franchiſe; and to proceed as in Caſes of Informations in the Nature of a *Quo Warranto*; and if ſeveral Rights of divers Perſons to the ſaid Offices or Franchiſes may be determined by one Information, then the Courts may give Leave to exhibit one ſuch Information againſt ſeveral Perſons to try their reſpective Rights thereto; and ſuch Perſon or Perſons,

Where an Information in the Nature of a *Quo Warranto*, and by whom to be exhibited.

9 **Annæ.**

The Proceedings to be thereupon.

May be againſt ſeveral Perſons.

When to plead, unleſs the Court gives further Time.

againſt whom ſuch Informations in the Name of a *Quo Warranto* ſhall be ſued, ſhall appear and plead of the ſame Term or Seſſions in which ſuch Information ſhall be filed, unleſs the Court ſhall give further Time to plead; and the Proſecutor ſhall proceed thereupon with the moſt convenient Speed that may be.

How Judgment to be if Defendant found guilty.

Coſts to be on both Sides.

That if upon a Trial the Defendant or Defendants ſhall be found guilty, the Court may give Judgment of Ouſter againſt ſuch Perſons, and fine him or them, and that the Relator ſhall have his Coſts of ſuch Proſecution; and if the Defendant be found Not-guilty, he for whom ſuch Judgment is given ſhall have his Coſts againſt ſuch Relator. A

The Courts may allow a reaſonable Time to plead, reply, rejoin or demur.

That the ſaid Courts may allow to each, as well Proſecutor as Defendant, ſuch convenient Time to plead, reply, rejoin or demur, as they ſhall think to be reaſonable. B

The Statute of *Jeofails* 5 **Annæ**, and all other of thoſe Statutes ſhall extend to them.

Alſo, That the Act for the Amendment of the Law made 5 *Annæ*, and all other Statutes of *Jeofails* ſhall be extended to theſe *Quo Warranto's*. C

The Defendant muſt in a *Quo Warranto* againſt him make a Title.

It is not ſufficient for the Defendant to ſay in a *Quo Warranto*, that ſuch a Subject hath a lawful Intereſt to hold a Leet without making of any Title to himſelf; for the Writ is *Quo Warranto* he claims them. 2 *Leon.* Caſe 31. D

How to plead in a *Quo Warranto.*

It is not ſufficient in a *Quo Warranto* for the Defendant to ſay *non uſurpavit libertatis prædictas*, but he ought to ſay, *nec earum aliquam.* 3 Leon. Caſe 135. E

In a *Quo Warranto*, a Preſcription to have free Warren in his own Manor, as well in the Freeholders Lands as his Demeſnes.

A Preſcription to have free Warren in his Manor, is good; as well in the Lands of the Freeholders, as his own Demeſnes. *Cro. Car.* 311. *pl.* 2. F

See the Stat. of *Quo Warranto.* 18 **E.** 1.

See the Statute of *Quo Warranto* with the Comment upon it in 2 *Inſt.* 494, 495, *&c.* G

How the Judgment in it to be.

When to be brought againſt particular Perſons.

Wherever any Judgment is given for the King for a Liberty which is uſurped, it is *quod extinguatur*; and that the Perſon who uſurped ſuch a Privilege, *libertat' &c. nullatenus intromittat, &c.* which is the Judgment of Ouſter: But the *Quo Warranto* muſt be brought againſt particular Perſons. 4 *Mod.* 61. H

When againſt a Corporation.

But where it is for a Liberty claimed by a Corporation, there it muſt be brought againſt the Body Politick, in which Caſe there may be a Seiſure of the Liberties, which will not warrant either the Seiſure or Diſſolution of the Corporation. 4 *Mod.* 58. I

A **How** to plead in *Quo Warranto*'s and to Informations in the Nature of *Quo Warranto*'s, and much good Matter thereupon. *Latch* 45, 46, 47. See alſo *Keilw.* from 137. *b.* to 152. *a.*

For Pleas in *Quo Warranto's.* An Account of ſeveral Years.

B **Where** there may be a ſecond Imparlance in a *Quo Warranto. Comb.* 12.

Imparlance.

C **Of** giving Judgment therein where Liberties are ſeiſed, *&c. Ibid.* 19.

Judgment.

D **A** *Quo Warranto* Information granted for uſurping the Office of Mayor *Leſtwithyel.* Mod. Caſes in Law and Equity 132.

For uſurping an Office.

E **Another** againſt the Steward of a Leet for impanelling a Jury not duly ſummoned. *Ibid.* 135.

Impanelling a Jury not ſummon'd.

F **A** Rule granted againſt divers claiming to be Capital Burgeſſes; and another to be Recorder of *Brecknock. Ibid.* 165, 6.

Burgeſſes and Recorder.

G **See** a Rule, *&c.* againſt the Mayor and Common Council of *Bedford. Ibid.* 35, 36.

Mayor and Common Council of *Bedford.*

H **On** that Information 'twas query'd, If the Verdict could be ſet aſide for Misbehaviour of a Juryman, and all the Judges of *England* divided. *Ibid.* 201, 2, 3.

Verdict, whether to be ſet aſide.

I **See** two Rules againſt two Perſons claiming to be Mayors, and others to be capital Burgeſſes of *Penryn. Ibid.* 215, 16.

Office of Mayor.

K **An** Information againſt *Pindar* for uſurping the Office of Mayor of *Penryn. Ibid.* 234.

The like.

L **The** Defendant (*Cracker*) found Guilty of uſurping the Office of Mayor of *Tregony* ſeveral Years, *&c.* fined 200 *l. Ibid.* 285, 6.

The like.

M **An** Information againſt the Mayor and Bailiff of *Whitchurch*, as being a Non-Reſident, and choſen by Non-Reſidents. *Ibid.* 35.

Non-Reſidence.

N **Note,** *Quo Warranto* Informations may be brought, with Leave of the Court, at the Relation of any Perſon deſiring to proſecute by Virtue of 9 *Annæ*, *cap.* 20. *Ibid.*

At whoſe Inſtance granted.

O **See** of Judgments in a *Quo Warranto. Carth.* 218.

Razure, See Deeds.

Recital and Miſrecital.

See { **Amendment.** **Evidence.** **Jeofail.** }

A Recital, what.

A Recital is the making mention in a Deed or Writing of ſomething which hath been done before. A

Where a Statute miſrecited in Pleadings is help'd by the Statute of *Jeofails*.

If a Statute be miſrecited in pleading in a Matter which goes to the Ground of the Action, which is brought upon the Statute; it is not helped after a Verdict by the Statute of *Jeofails*; but if it be miſrecited only in a circumſtantial Matter, and which goes not to the ground of the Action, it is helped after a Verdict by that Stat. (*Trin.* 1650. *B. S.*) For the Statute helps only Matters miſpleaded in Matter of Form, and not Matters of Subſtance. See Tit. **Pleas and Pleadings.** B

Nul tiel Record is no Plea to a general Act miſrecited.

Nul tiel Record is no Plea to a general Act which is miſrecited; becauſe the Judges are bound to take Notice of it, and the Party ought to demur. 8 *Rep.* 27. *b.* 28. *a.* C

Recital of one Leaſe in another, is not a ſufficient Proof that there was ſuch a Leaſe.

The Recital of one Leaſe in another is not a ſufficient Proof that there was ſuch a Leaſe as is recited, *Vaugb.* 74, 75. without producing of the Grant or Inrollment. 2 *Lev.* 109. D

Where a Recital in a Deed ſhall be binding.

If I by my Deed recite that I am poſſeſs'd of an Intereſt in certain Lands, and aſſign it over by Deed, and am bound in a Bond to perform all the Agreements in the Deed, if I be not poſſeſs'd of ſuch Intereſt, the Condition is broken. 1 *Leon.* 112. Caſe 164. And as a Recital of itſelf is nothing, yet being joined and conſidered with the reſt of the Deed, it is material. *Ibid.* E

A Power may be well executed, tho' no Mention made in the Deed of it.

A Power may be well executed, though there is no Recital made of the Power in the Deed for the Execution thereof. 1 *Lev.* 153. F

Miſrecital of a Leaſe upon a Grant of a Reverſion, and good.

A Grant of a Reverſion on a Leaſe miſrecited, and yet held good. *Hob.* 108. G

A **The** Recital of a Leaſe in a Deed of Releaſe is good Evidence of a Leaſe againſt the Releaſor, and thoſe who claim under him. *Mod. Caſes* 44.

Recital of a Leaſe in a Releaſe is good.

Recognizance.

See { Bail.
Scire Facias.
Statute.

B **Some are for Debt, and ſome to appear at Seſſion or Aſſizes, and ſome for Bail.**

Recognizance, what.

C **A Recognizance** of Bail entered into in the Common Pleas, is entered ſpecially, *viz.* they are bound to pay a certain Sum of Money, if the Party condemned doth not pay the Condemnation, or render his Body to Priſon; but a Recognizance entered into in this Court, is entered generally, *viz.* that if the Party be condemned in the Action, he ſhall render his Body to Priſon, or pay the Condemnation, or the Bail will do it for them. (*Paſch.* 23 *Car. B. R.*) This is according to the ancient Cuſtom and Practice of each Court, who always keep up to their uſual Forms, for without Obſervation of Methods and Forms, there would be nothing but Confuſion.

How a Recognizance of Bail is enter'd in the CommonPleas, and how in *B. R.*

D **A Recognizance** entered into by Bail was ordered by the Court to be amended. *Cro. Jac.* 272. *pl.* 5.

A Recognizance entred into by Bail order'd to be amended.

E **A Recognizance** for Money lent, may be taken by the Chief Juſtices at any Time in Vacation: And although it is not a perfect Record until entred upon the Roll; yet when enter'd, it is a Recognizance from the firſt Acknowledgment, and binds Perſons and Lands from that Time. *Hob.* 196.

Recognizance for a Debt.

F **A Recognizance** to appear at Aſſizes or Seſſions, may be taken by any Juſtice of the Peace.

G **How** a Recognizance or Statute ſhall be diſcharged when ſatisfied. See *March* 159, 160. *pl.* 230.

How to be diſcharged when ſatisfied.

F **Debt** will lie upon a Recognizance. 2 *Leon. Caſe* 24.

Debt lies upon a Recognizance.

What is the proper Proceſs upon it.
What the proper Execution.

A **A** *Sci. Fa.* is the proper Proceſs upon a Recognizance in Chancery, and upon a *Sci. feci* or two *Nichils* returned and a Judgment thereupon, the proper Execution is an *Elegit*. See *Cro. Jac.* 3. *pl.* 2.

If the Extenders value too high, then what Remedy.

B **Upon** an Execution upon a Recognizance for Debt, if the Land be extended too high, the Plaintiff may, at the Return of the Writ come into Court, and pray, That the Extenders may retain it, and that he may have Execution of their Lands, and this within the Equity of the Statute of *Acton Burnell*. *Cro. Jac.* 12. *pl.* 16.

When the Lands of Bail become chargeable with the Recognizance.

C **Whether** the Lands of the Bail are bound from the Time of the Recognizance entered into, or the Recovery of the Judgment againſt the Principal, well argued, but not reſolved. *Cro. Jac.* from 449, to 452.

Eſtreat.

D **A Recognizance** taken before a Juſtice of Peace and forfeited, and then removed into *B. R.* cannot be eſtreated. *Comb.* 3.

Scire Facias.

E **But** on a Recognizance in *B. R.* a *Sci. fac.* lies there before it is eſtreated into the Exchequer. *Ibid.* 385

Intereſt of the Conuzee.

F **Where** two Statutes (or Recognizances) acknowledged at ſeveral Times are extended, the Conuzee of the latter Statute hath a Reverſional Intereſt wherein the Elder may be merged. *Ibid.* 77, to 82.

How to be taken in *B. R.*

G **Recognizance** in *B. R.* tho' taken at the Judge's Chamber, muſt be taken as if taken in Court. *Salk.* 564, 659.

In *C. B.*

H **But** *aliter* in *C. B.* for there it is to be declared on as taken at his Chamber. *Ibid. vide* 600, 659.

At what Time it binds.

I **Recognizance** of Bail in *C. B.* binds from the Caption; but in *B. R.* from the Entry only. *Ibid.*

Superſedeas.

K **No** *Superſedeas* to a *Certiorari* for removing an Indictment, unleſs Recognizance entered into of 20 *l.* *Ibid.*

Aſſignment by the Conuzee.

L **The** Conuzee of a Statute can't aſſign his Intereſt after an Extent and a *Liberate*, if the Conuzor continues in Poſſeſſion. *Ibid.* 563.

Forfeiture of Recognizance.

M **Upon** a Recognizance to proſecute with Effect, if the Plaintiff is neither nonſuited, nor the Judgment affirmed; yet 'tis a Proſecution with Effect, and the Recognizance is not forfeited. *Carth.* 519.

Record.

See **Amendment.**

A **Records are reſtrained to the Rolls of ſuch Courts only as are Courts of Record, and not to the Rolls of inferior Courts, or any other Court which do not proceed** Secundum Legem & Conſuetudinem Angliæ; **and if Records, being the Rolls or Memorials of the Judges of the Courts of Record, import in themſelves ſuch incontroulable Verity, that they admit of no Averment to the contrary.** Co. Litt. 260. a.

Records, what.

B **In** the Caſe of *Dallington* verſ. *Sheppard. Trin.* 1657. in a Writ of Error. By *Glyn* Chief Juſtice. If after a *Revocetur niſi* is pronounced by the Court, and the Record is amended by Order of Court, the Record ought to be read again and opened before it can be a *Conſilium*; and this was ſo done in this Caſe, by *Twiſden* of Counſel for the Writ of Error.

After a *Revocetur niſi*, and the Record amended, it muſt be read again before it can be a *conſilium.*

C **Where** a Record tranſmitted by the Chancery into *B. R.* may be remanded into the Chancery. *Ibid.* 27.

A Record may be remanded into the Chancery.

D **A** *Habeas Corpus* is not a Record until it is returned and filed, and then it cannot be amended, but before it be filed it may. (*Hill.* 21 *Car. B. R.*) *Vide antea.*

When a *Habeas Corpus* is a Record.

E **If** the Writing or Form of a Letter in a Record be doubtful, ſo that it may be taken either for one Letter or another Letter, the Court will conſtrue it to ſtand for that Letter, that is for the maintaining and upholding of the Record, and not for that Letter which will go to the making of the Record erroneous and naught, *ut res magis valeat quam pereat.* (*Hill.* 21 *Car. B. R.*) For the Law doth delight to maintain the Reality and Being of Things, and favours not the Deſtruction and nullifying of them; and therefore if a Record be ſo penn'd, that the Words may receive a double Conſtruction, one to make the Record good, and another

If a Letter in a Record be doubtful, how the Court will conſtrue it.

another to make it erroneous, the Court will interpret the Words that Way, that will make the Record good, and not that Way which will make it erroneous, for ſuch Interpretation is more for the Advancement of Juſtice.

How Matter of Record muſt be proved.

A **A Matter** of Record muſt be proved by the Record itſelf, and not by Evidence; for no Iſſue can be joined upon it to be tried by a Jury, as it is of Matters of Fact. (21 *Car. B. R.*) For the Credit of a Record is greater than any Teſtimony of Witneſſes; but if the Jury do know there was ſuch a Record, they may find it though it be not produced.

When a Record certified from an inferior Court is ſaid to be in *B. R.* ſo as to be proceeded on.

B **A Record** certified out of an inferior Court upon a Writ of Error brought, is not ſaid to be in this Court to be proceeded upon before it be entered here, or be in the Office, altho' it be ſhewed there. (21 *Car. B. R.*) For before it becomes a Record of this Court, this Court is not poſſeſſed of the Cauſe.

It muſt be pleaded intire; and ſo muſt a Verdict find it.

C **A Record** ought to be pleaded intire, that is, the whole Record, and not Part of it, with an *inter alia*, in Reference to the Record, and ſo ought a Special Verdict to find a Record, unleſs in Caſe you plead a Judgment, or declare upon a Judgment in a ſuperior Court; for there you may ſay that the Plaintiff *recuperavit* againſt the Defendant generally, but in Caſe of Proceedings in a County-Court, there all the whole Proceedings muſt be ſet forth particularly, for that not being a Court of Record, every Proceeding therein is traverſable, (*Mich.* 22 *Car. B. R.*) For Part of a Record taken by itſelf, is not the Record, for a Record cannot be taken by Parcels, becauſe it is an intire Thing, except in the Caſe before-mentioned.

Verdict ſet aſide, certified as Parcel of the Record.

D **Where** the firſt Verdict which was ſet aſide only for the Inſufficiency of it in Point of Law, and not for undue Practice, or Miſfeaſance, was certified as Parcel of the Record, as well as the laſt Verdict. 2 *Saund.* 254.

Record of an Act made *in præſenti*, muſt be in the Preſent Tenſe.

E **The** Record of the Court of an Act made by the Court *in præſenti*, always ought to be in the Preſent Tenſe. *Ibid.* 393.

Record amended after Demurrer diſcontinued.

F *Paſch.* 1659. The Court ordered a Record to be amended after a Demurrer to the Record was diſcontinued; for then it was as if no Demurrer had been.

Amendments of Records.

G **For** Amendments of Records, ſee the Statutes of 8 *H.* 6. *cap.* 15. and 27 *H.* 8. *cap.* 26.

The Court will not ſupply a Blank in a Record.

H **The** Court will not ſupply a Blank left in a Record to make it perfect, when before it was defective. (*Mich.* 22 *Car. B. R.*) For this were for the Court to make a Record, which is not their Office to do, but to judge of them, and by ſo doing the Party that might take Advantage of the Defect of the Record, would thereby be deprived of it, which the Court will be no Cauſe of.

A **The** Court would not take the Record of the Return of a *Mandamus* off the File, though both Parties conſented, not knowing of any Precedent for it; but they made a Rule that the Record ſhould be daſhed through in the Nature of a Cancellation. See *Raym.* 69.

The Court refuſed to take a Record off the File, tho' both Parties conſented.

B **Where** the Court takes Notice without pleading of a Record in the ſame Court although not entred on the ſame Roll. 3 *Lev.* 219. in *C. B.*

Where the Court will take Notice of a Record without pleading it.

C **If** the Record of the Iſſue made up ready for the Trial of the Cauſe be defective in ſome ſmall Thing which may be well amended without defacing of the Record; the Court upon a Motion will give the Party Leave to amend the Record, if he will pay Coſts to the Defendant, although it be entered for Trial; but the Court will not give Leave to amend, if it cannot be done without defacing and much altering of the Record. (*Mich.* 22 *Car. B. R.*) For the Records ought to be plain and fairly written, that there may no Queſtion ariſe how they are to be read.

Where the Court will give Leave to amend a Record, and where not.

D **The** Court will not make Application of a Record produced to the Matter for which it was produced, for the Benefit of the Party that doth produce it, but the Party himſelf or his Counſel muſt do it. (*Paſch.* 23 *Car. B. R.*) For if the Court ſhould do it, it would be for them to act the Part of Counſellors, and not of Judges, which they ought not to do.

The Party or his Counſel muſt make the Application of a Record.

E **A Tranſcript** of a Record, which Record was amended in the Common Pleas, may by Leave of this Court upon Motion, be amended here by a Clerk of this Court; but without Leave of the Court, nor out of the Court, it may not be done. (*Paſch.* 23 *Car. B. R.*) For a Record cannot be amended without a Rule of the Court grounded upon Motion, which is called the Leave of the Court, for the Court ſpeaks by their Rules.

A Tranſcript of a Record amended in *C. B.* may by Leave of Court be amended in *B. R.*

F **The** Judges cannot judge of a Record given in Evidence, if the Record be not *ſub pede ſigilli*, that is, exemplified under Seal; but a Jury may find a Record, although it be not ſo, if they have a true Copy proved to them, or other Matter given them in Evidence ſufficient to induce them to believe that there was ſuch a Record. (*Paſch.* 23 *Car. B. R.*) For the Judges are to judge only *de exiſtentibus apparentibus*, but the Jury are induced in their Conſciences by Things given in Evidence, which are but probable for the moſt Part; and accordingly they give their Verdict.

The Judges cannot judge of a Record unleſs it be exemplified.

But a Jury may find it without Exemplification.

G **If** a Record be removed into this Court by a Writ of Error, and the Defendant's Counſel in the Writ of Error doth not open the Record right as it is, unto the Court; this falſe opening of it ſhall

Miſtake of Counſel in opening a Record ſhall not prejudice the Plaintiff in a Writ of Error.

not be prejudicial to the Plaintiff in a Writ of Error, but he may afterwards, by opening of it right, rectifie the Miſrecitals. (*Trin.* 23 *Car. B. R.*) And in ſuch Caſes the Court will have Copies delivered to them, and if they ſee Cauſe have the Record openly read, that they may judge of it.

A Record contradictory in Appearance may be a Record.

A **A Record** may be contradictory in Appearance, and yet may in ſome Caſes be nevertheleſs a good Record. (*Trin.* 23 *Car. B. R.*) For the Law more reſpects the Reality of Things than outward Appearances.

A Record that is razed is good, if legible.

B **A Record** that is razed (if legible) remains a good Record, notwithſtanding the Razure in it; yet he that razed it, is not to go unpuniſhed for his Offence. *Mich.* 1649.

Faults of Clerks in Records removed from inferior Courts, amendable in *B. R.*

C **Apparent** Faults and Miſpriſions of the Clerks only in Records removed out of inferior Courts into this Court, are adjudged now to be amendable here by the Statute of *Jeofails.* (*Trin.* 23 *Car. B.R.*) But not other Faults or Errors in them. See the Statute.

Deed inrolled and Decree in Chancery no Records.

D **Neither** a Deed inrolled or a Decree in Chancery inrolled are Records, but it is a Deed and a Decree recorded. (*Mich.* 23 *Car. B. R.*) For a Record of a Court is made up in the Proceeding in ſome Cauſe proceeded in in that Court; and there is a great Difference betwixt a Record and a Thing recorded; for though every Record be a Thing recorded, yet every Thing recorded is not a Record.

Counſel muſt open the Record after it is read: But the Court may ſuffer it to be read afterwards.

E **When** a Record is to be read in Court, the Counſel at the Bar ought to open the Effect of the Record after it is read by the Clerk of the Court, by the Cuſtom of Practice; yet the Court may ſuffer it to be read afterwards if they pleaſe, and after reading it is then by Rule of Court made upon the reading, ordered to be ſet down for a *Concilium.* *Hill.* 23 *Car. B. R.*

Attorney to enter the whole Record before the Term after the Trial.

F **There** was a Rule of Court made, That every Attorney of the Court ſhall enter the whole Record upon the Roll after a Trial had in the Cauſe before the next Term after the Trial ſo had, upon pain of twenty Shillings, to be paid by every ſuch Attorney that ſhall not do it, towards the Relief of the Poor. (*Hill.* 1649. *B. S.*) That the Record may be ſpoken to the next Term after a Trial, if there be Cauſe; which cannot be done until the Record be perfected, and ſo by the not perfecting of it the Client is delayed; but there is now an Act of Parliament made 4 & 5 *W.* & *M.* to this Purpoſe, to which I refer the Reader.

A Record cannot be removed by Writ of Error before Judgment entred.

G **A Record** cannot be removed by a Writ of Error, until the Judgment in that Record be entered. (*Paſch.* 1650. *B. S.* 12 *Maii.*) For 'till then the Record is not perfected; the Writ of Error likewiſe ſays, *Si judicium inde redditum ſit tunc recordum & proceſſum prædict'*, &c.

A **By** *Rolle* Chief Juſtice, It was the ancient Cuſtom to enter the Record of the Cauſe before the Cauſe was carried down to the Aſſizes to be tried, (the Writ of *Niſi prius* being a Tranſcript thereof) but this Courſe was found to be inconvenient, becauſe it could not be amended after the Entry of it, and therefore now they uſe not to enter the Record of the Cauſe before the Trial be paſt; and therefore he ordered a Rule to be ſet up in the Office, That if the Trial do not proceed at the Aſſizes, at which the Record was carried down to be tried, and the Plaintiff will carry it down again, that he give the Defendant new Notice of the Trial; and ſo likewiſe is the Defendant to do where he intends to try the Cauſe by Proviſo, that the adverſe Party may not attend with his Counſel and Witneſſes to no Purpoſe. *Trin.* 1651. *B. S.*

The Record was formerly entred before the Cauſe was carried down to be tried.

How the Courſe now is.

B **If** a Record comes once into the King's Bench by a Writ of Error, the Record itſelf never goes out again: But a Tranſcript of it may go to the Houſe of Lords upon a Writ of Error.

Where a Record comes to the King's Bench, it ſhall not go out again.

C **This** Court will now amend a Record (upon the Return of a *Certiorari*) which is removed out of an inferior Court; and they will alſo amend a Record which is removed hither out of the Common Pleas by the Record of that Court brought into this Court, if they ſee Cauſe: And ſo they will do a Record removed out of the County-Palatine of *Cheſter*, *&c.* But formerly they would not amend Records out of inferior Courts, neither did they conſtrue the Statutes of *Jeofails* to extend to them: But the Law in both theſe Caſes is now altered by the Statute of 4 *&* 5 *Annæ*, *For Amendment of the Law.*

How Records are now amended in this Court which came out of other Courts.

Statute of *Jeofails* extends to inferior Courts.

D **But** if the Tranſcript of a Record be falſe, the Court will, upon a Motion, order a *Certiorari* to an inferior Court, to certify how the Record is below: And if it be upon a Writ of Error out of the Common Pleas, then they will grant a Rule to bring the Record out of the Common Pleas into this Court; and they will then order the Tranſcript to be amended in Court, according to the Roll in the Common Pleas.

How the Tranſcript of a Record upon a Writ of Error from an inferior Court ſhall be amended.

And how upon a Writ of Error out of the Common Pleas.

E **See** a Rule denied to make up a Record with an Arreſt of Judgment, in order to ſupport a Bill in Chancery againſt the Proſecutor. *Modern Caſes in Law and Equity* 45.

A Record with an Arreſt of Judgment deny'd to be enter'd.

F **See** where an Attachment was granted againſt an Aſſociate for amending a Record after Motion in Arreſt for the ſame Error. *Ibid.* 226.

Amendment without Leave.

G **Where** an Error may be aſſigned contrary to the Record. 3 *Salk.* 2.

Error contrary to the Record.

Nul tiel Record.

Where *Nul tiel Record* is pleaded, the Party cannot demur to ſuch Plea. 2 *Salk.* 566. 3 *Salk.* 294, 330. A

Oyer of the Record.

Where upon ſuch Plea 'tis proper to crave Oyer of the Record, unleſs it is in another Court. 3 *Salk.* 295. B

Prout patet per Recordum.

In Eſcape the Plaintiff did not alledge the Commitment *prout patet per Recordum*, but held well on a general Demurrer. *Salk.* 565. C

Certiorari.

On a *Certiorari* the very Record is return'd *Vide Certiorari. Ibid.* D

Acts of the Court and of the Party.

Acts of the Court upon Record may be altered the ſame Term, but of the Party not. *Salk.* 566, 567. E

Motion for a *Concilium.*

Roll of a precedent Term ought to be filed before any Motion is granted to make it a *Concilium. Ibid.* 565. F

Recovery.

See Baron and Feme. Conveyance. Deeds. Fine. Pleas. Uſes.

Recovery, what.

Recovery, which is in Latin Recuperatio id eſt, ad rem per injuriam extortam ſive detentam per ſententiam judicis Reſtitutio. *Co. Litt.* 154. *a.* G

Common Recovery, what.

But the Recovery intended here is fictio juris, or a Conveyance by Conſent, uſed for the better Aſſurance of Lands upon any Man, wherein the Recovery in Value, the ſuppoſed Recompence to him who loſeth the Land, is but a Fiction in Law; and this Recovery by Conſent is now become a common Aſſurance, upon which Uſes may be limited and raiſed. 1 Rep. 15. b.

Recompence in Value is not the ſole Reaſon why a Recovery bars.

Although the Recompence in Value is one main Reaſon that a Recovery bars, yet it is not the ſole Reaſon, for Recoveries are favoured, they being for the Preſervation of Eſtates, and become the common Aſſurances of the Nation, and ſhall not be taken ſo ſtrictly as real Recoveries are. H

A **Where** ſuperfluous Words in a Common Recovery ſhall not hurt it. 2 *Saund.* 296.

Where ſuperfluous Words ſhall not hurt.

B **That** Common Recoveries are greatly favoured in Law. *Ibid.*

Recoveries favoured in Law.

C **A Recovery** of Lands in a County-Palatine at *Weſtminſter*, is void. 1 *Saund.* 74. becauſe out of the Juriſdiction of the Courts at *Weſtminſter*.

At *Weſtminſter* of Lands in a County Palatine, void.

D **A Recovery** cannot deſtroy a Thing executory, which doth depend upon a Contingency. (*Paſch.* 24 *Car. B. R.*) Becauſe it was uncertain at the Time of the Recovery ſuffered whether it would ever be or no; and a Recovery cannot work upon ſo remote and uncertain an Eſtate.

Cannot deſtroy a Thing executory.

E **A Recovery** with ſingle Voucher is to bar the Tenant and his Heirs, of ſuch Eſtate Tail only as is then in him, and to bar others and their Heirs, of ſuch Eſtates as they have in any Reverſion expectant, or Remainder dependant upon the ſame; and alſo of all Leaſes and Incumbrances derived out of ſuch Reverſions or Remainders. *Noy* 81.

Who is barr'd by a Recovery with ſingle Voucher.

F **A Recovery** with double Voucher is to bar the firſt Vouchee and his Heirs, of every ſuch Eſtate as at any Time was in him, or in any of his Anceſtors; and alſo all other Perſons, of ſuch Right to a Reverſion or Remainder as were thereupon at any Time expectant or dependant; and of all Leaſes, Charges and Incumbrances derived out of any ſuch Reverſion or Remainder; and the ſame will be a perpetual Bar of ſuch Eſtate whereof the Tenant was then ſeiſed in Reverſion or Remainder expectant or demandant upon the ſame. *Nov.* 81, 82.

Who is barr'd by a Recovery with double Voucher.

G **A Recovery** with treble Voucher is to make a perpetual Bar of the Eſtate of the Tenant, and of every ſuch Eſtate of Inheritance as at any Time had been in the firſt or ſecond Vouchee, or any of them, or either of their Anceſtors, whoſe Heirs they are of ſuch Eſtate; and as well of every Reverſion thereon dependant, as alſo of all Leaſes, Eſtates, Charges and Incumbrances derived out of any ſuch Reverſion or Remainder. *Ibid.* 82.

Recovery with treble Voucher is a perpetual Bar of the Tenant's Eſtate.

H **It** is not neceſſary for the Judges to examine a Feme Covert, when ſhe joins with her Huſband to ſuffer a Recovery of her own Lands, becauſe it ſhall be ſuppoſed ſhe doth it freely and voluntarily; for the Law uſeth to make the beſt Interpretation of Things; yet it is prudential to do it, becauſe it may fall out that the Feme may be brought by Fraud or Force to do it, and the Law doth not favour the gaining of Eſtates by Force or Fraud. *Trin.* 1651. *B. S.* by *Rolle*, and he ſaid that he uſed to do it.

Judges need not examine a Feme Covert when ſhe joins with her Huſband in a Recovery of her own Lands.

I **A common** Recovery is by Uſage and Cuſtom become the common Aſſurance of the Nation. 5 *Rep.* 40. *b.* and is a Conveyance whereupon Uſes may be limited and raiſed. 1 *Rep.* 14, 61. 2 *Rep.* 74. *a.* Neither ſhall it be reverſed for Infancy. See Title **Error, Infant.**

A Recovery is the common Aſſurance of the Nation.

Nothing can bar a Tenant in Tail from ſuffering of a common Recovery.

A **No** Condition or Limitation, be it by Act executed, or by Limitation of an Uſe, or by a Deviſe in a Will, can bar Tenant in Tail to alien by Common Recovery. See *Litt. Rep.* 234. ſuch Condition is void.

What Remedy the Recoverors have to recover their Rents, Services and Cuſtoms. 7 **H.** 8. **cap.** 4. **ſect.** 2, 3.

B **Where** a common Recovery is ſuffered, the Recoverors, their Heirs and Aſſigns, may diſtrein for Rents, Services and Cuſtoms, and make Avowries for the ſame, as thoſe Perſons againſt whom ſuch Recovery is, ſhould have done, if the ſaid Recovery had not been; and ſhall recover their Coſts and Damages, 7 *H.* 8. *cap.* 4.

Termors and Tenants by Statute and *Elegit* ſhall enjoy their Eſtates againſt all Recoverors. 21 **H.** 8. **cap.** 15.

C **All** Termors and their Aſſigns, and Tenants by Statutes and *Elegit*, ſhall enjoy their Farms and Eſtates againſt all Recoverors upon feigned Recoveries.

The Party died the ſame Day that the Recovery was had, and good.

D **The** Party who ſuffered the Recovery, died the firſt Day of *Michaelmas* Term, between five and ſix in the Morning, upon which Day the Recovery was ſuffered; and adjudged good. *Shelley*'s Caſe, 1 *Rep.* from 93. to 106. *b.*

There muſt be a good Tenant to the *Præcipe*.

E **To** every Recovery there muſt be a good Tenant to the *Præcipe*, or elſe it is void.

To every Recovery it ſhall be intended that there was a good Tenant to the *Præcipe*, till the contrary be ſhewn by the other Side.

F **Where** a Recovery was produced in Evidence, the other Side inſisted to have a good Tenant to the *Præcipe* proved. *Cur. contra*, For it ſhall be intended that there was a good Tenant to the *Præcipe*; and if it were otherwiſe, the Proof muſt come on the other Side. *Cro. Jac.* 455.

Tenant to the *Præcipe* before Judgment, is good.

G **A Tenant** to the *Præcipe pendente placito* before Judgment is well enough. *Show. Rep.* 347.

A Judgment to recover in Value is a Bar to an Eſtate-Tail.

H **A Judgment** given for Tenant in Tail to have in Value, is a Bar to an Eſtate Tail, although no Recompence be rendered in Value, *&c.* 10 *Rep.* 58. *a.* The Recompence in Value goes only to them who vouch, and have Loſs. *Plow. Com.* 514, 515.

Covinous Recoveries by Tenant for Life, *&c.* made void as to a Remainder-Man. 14 **Eliz. cap.** 8. **Sect.** 2.

I **Recoveries** ſuffered by Tenants for Life, Tenants by the Courteſy, and Tenants in Tail after Poſſibility of Iſſue extinct, by Colluſion, ſhall be void as to a Remainder-Man.

Tenant for Life, Remainder in Tail, a *Præcipe* is brought againſt them, and a Recovery had; this binds neither the Iſſue in Tail, nor Remainder-Man.

K **Tenant** for Life, Remainder to his eldeſt Son in Tail, Remainder to his ſecond Son in Tail; a *Præcipe* is brought againſt Tenant for Life, and the eldeſt Son, (*Note* it ſhould have been brought againſt Tenant for Life, and then the Remainder-Man ſhould have been vouch'd) and they ſuffer a a Common Recovery vouching the common Vouchee; this doth not bar the Intail, nor the Remainder, neither are the Iſſue in Tail barr'd by it. *Cro. Eliz.* 670. *pl.* 26.

A **A Fine** and Recovery of *Ceſtuy que Truſt* ſhall bar and transfer a Truſt as it ſhould an Eſtate at Law, if it were upon a good Conſideration. *Chanc. Rep.* 49.

Where a Recovery ſhall bind a Truſt.

B **Tenant** in Tail mortgages for Years, and afterwards marries, and ſuffers a Recovery for his Wife's Jointure; this Recovery ſhall enure to make good the Mortgage, though deſigned only for the Marriage Settlement: So alſo in the Caſe of a Judgment; for a Recovery ſhall enure to make good all his precedent Acts, *Chanc. Rep.* 120.

Tenant in Tail mortgages for Years, and after ſuffers a Recovery upon another Occaſion; this ſhall enure to make good the Mortgage.

C **All** Recoveries againſt Tenant by the Courteſy, Tenant for Life, Tenant in Dower, and Tenant in Tail after Poſſibility, of any Lands whereof they are ſeiſed, ſhall be void againſt thoſe then in Reverſion. 10 *Rep.* 45. *a.*

All Recoveries againſt Tenant for Life, *&c.* ſhall be void.

D **The** Statute of 14 *Eliz. cap.* 8. doth not extend to preſerve any Reverſion or Remainder expectant upon an Eſtate-Tail, where Tenant for Life is impleaded, and he vouches Tenant in Tail. 10 *Rep.* 45. *a.*

But where Tenant for Life vouches Tenant in Tail, they are good. 14 **Eliz.** *cap.* 8.

E **The** three inſeperable Incidents to an Eſtate-Tail:

The three Incidents to Recoveries, which cannot be reſtrained by Condition or Limitation.

F Firſt, **Dower.**
Secondly, **Tenant** by Courteſy after Iſſue.
Thirdly, **To** bar the Intail by a Recovery or Fine to bar Iſſues.

G **But** Tenant in Tail may be reſtrained from diſcontinuing in Fee or in Tail, or *pur Auter Vie.* 10 *Rep.* 38, 39.

May be reſtrained from diſcontinuing.

H **The** Recompence in Value is the Reaſon of the Bar by a Common Recovery againſt the Iſſue in Tail: But not as to him in Remainder or Reverſion.

The Recompence in Value goes to the Iſſue in Tail, not him in Remainder or Reverſion.

I **A Recovery** binds not an executory Deviſe; becauſe the Ground of this is the Recompence which extends not to theſe Eſtates. *Lutw.* 1224, 1225.

Where a Recovery binds not an executory Deviſe.

K **Nor** where Tenant in Tail grants a Rent, and afterwards ſuffers a Recovery; the Rent which was *in eſſe* ſhall not be barr'd by this Recovery, no more ſhall a Rent annex'd to a Reverſion, though the Reverſion be gone. *Cro. El.* 792, 793. *pl.* 36.

A Recovery ſhall not bar a Rent granted by Tenant in Tail; nor a Rent annex'd to a Reverſion.

L **A Recovery** bars only where there is a Privity in Law, as he in Remainder or Reverſion. *Carter* 53. It ſhall not bar the Heir who doth not claim by Diſcent, but as a Purchaſor only. *Mich.* 9 *W. inter Lloyd & Carew.*

Bars only where there is a Privity in Law.

Not an Heir who claims by Purchaſe.

A good Tenant to the *Præcipe* ſhall be intended, until the contrary appears.

A **In** every Common Recovery there ſhall be intended to be a good Tenant to the *Præcipe*, until the contrary be ſhewn on the other Part. *Lutw.* 1549.

One vouch'd who had no Title, and good.

B **Tenant** in Tail makes a Tenant to the *Præcipe*, who vouches a Stranger, who vouches the Tenant in Tail, who vouches the common Vouchee; this is a good Recovery, and ſhall bar the Eſtate-Tail, and all Remainders over. *Page & Hayward, Paſch. 7 Annæ.*

How to plead a Writ of Entry brought.

C **It** is not neceſſary always to alledge how the Tenant in a Common Recovery became a Tenant; but to ſay, That a Writ of Entry was brought againſt *A.B.* then Tenant of the Freehold. *Lutw.* 1549. But the uſual Way is to plead how he became Tenant.

Tenant in Tail, Remainder for Years, ſuffers a Recovery, it bars the Remainder.

D **It** was a Doubt by 9 *Eliz.* That if there was a Tenant in Tail, Remainder for Years, and Tenant in Tail ſuffers a Recovery, whether the Leaſe for Years be barr'd or no? Becauſe it was ſaid, That no Recompence can go to this, being a Chattel. But by *Hale* Chief Juſtice: The conſtant Experience hath been, that this Leaſe ſhall be barr'd. 2 *Lev.* 30, 31. 1 *Mod.* 110.

What Eſtates-Tail are preſerved by the Statute of 34 H. 8. cap. 20.

E **No** Eſtate-Tail in Poſſeſſion is preſerved by the Statute of 34 *H.* 8. *cap.* 20. only Eſtates-Tail created by Letters Patent, or where the Eſtate-Tail is of the King's Proviſion, and not where it is of the Gift or Creation of a common Perſon without the King's Proviſion. 2 *Rep.* 15. *a. b.* 52. *a.* There the Iſſue and Remainder ſhall be barr'd. *Moor*, Caſe 344. for it binds all Perſons until it comes to the Crown. *Moor*, Caſe 466. *fol.* 349, 449.

The Recovery ſhall not hurt the Heir in Tail.

34 & 35 H. 8. c. 20. Sect. 2.

F **That** after the Death of ſuch Tenant in Tail againſt whom ſuch Recovery ſhall be had, the Heir in Tail may enter and enjoy the Lands ſo recovered according to the Form of the Gift of Intail, *Non obſtante* the Recovery. *Sect.* 2.

Where a common Recovery bars all Eſtates-Tail, Remainders, and Leaſes granted by a Remainder-Man.

Recoverors ſubject to the Uſes, although not Parties to the Deed.

G **A Common Recovery** againſt Tenant in Tail binds not only his Iſſue and the Remainder, and all Leaſes, Charges, *&c.* granted by him in Remainder, but alſo the Reverſion, and all Leaſes and Charges granted by him in Reverſion. 1 *Rep.* 62. *b.* 63. *a.* 52. *b.* Although Recoverors were Strangers to the Indenture, yet their Eſtate was ſubject to the Uſes of it. 2 *Rep.* 77. *a.*

Where a Leaſe ſhall not be defeated by a Recovery.

H **A Leaſe** for Years made by him who after ſuffers a Recovery, is good, and ſhall not be defeated by the Recovery; but otherwiſe where the Recovery is by a good Title. 2 *Leon.* Caſe 89. *fol.* 65.

3 It

A **It** is a Rule, That every Stranger to a Recovery may falſify if he came not in pending the Writ againſt him againſt whom the Recovery was; for he cannot have Error or Attaint. *Cro. El.* 284. *pl.* 1.

Where a Stranger may falſify.

B **A Common Recovery** was reverſed for Infancy. *Cro. El.* 323.

A Recovery reverſed for Infancy.

C **A Guardian** was allowed by Order of the Court to an Infant, that a Recovery might be ſuffered againſt him as Vouchee, and he was brought into Court, being but four Years old, and vouch'd; and his Guardian appeared and vouch'd the common Vouchee. *Cro. El.* 471. *pl.* 24. *Hob.* 197. *Cro. El.* 172. *Cro. Car.* 307.

An Infant vouch'd appeared by his Guardian and ſuffered a Recovery.

D **If** Tenant in Tail grants a Rent-Charge, and ſuffers a Recovery, the Rent-Charge ſhall not be avoided; though it doth a Reverſion: Becauſe the Eſtate of him that ſuffers the Recovery is charg'd with the Rent. 1 *Mod.* 109. 1 *Cro.* 598. See Title **Rent,** and *Cro. El.* 292, 293.

A Rent granted by Tenant in Tail, ſhall not be avoided by a Recovery.

E **If** there be a Limitation of Uſes upon Condition, and the *Ceſtuy que Uſe* ſuffers a Recovery, that will not deſtroy the Condition, the Eſtate being charged with it: For the Recoveror can only have the Eſtate, as he that ſuffered the Recovery had it. 1 *Mod.* 109.

Neither ſhall a Condition.

F **He** in Remainder in Tail grants a Rent-Charge, a Recovery ſuffered by Tenant in Tail ſhall bar it; becauſe the Recoveror comes in, in the Continuance of that Eſtate which is not ſubject to the Rent, but is above all thoſe Charges. 1 *Mod.* 109. See *Capel*'s Caſe, 1 *Rep.*

But a Rent granted by the Remainder-Man ſhall.

G **Where** a Recovery is ſuffered, and the Uſes are declared by a Deed bearing Date before the Recovery, there no other Uſes can be declared: But if the Uſes are declared by a Deed bearing Date afterwards, there a Stranger ſhall be admitted to plead other Uſes before the Deed, but an Heir at Law ſhall not: But when nothing appears to the contrary, it ſhall be a good Declaration. 9 *Rep.* 10. *a.* 15. *a.* *Hill.* 8 *W.* *B. R.* See the Statute of 4 *&* 5 *Anna.*

Uſes declared before the Recovery, no other Uſes can be declared.

4 & 5 **Ann.**

H **Where** the Uſes of a Fine are declared by a Deed before the levying, there no other Uſes can be declared by Parol. *Ram & Thacker*, upon a Writ of Error out of *Ireland*. *Tempore Car.* 2.

So alſo in a Fine.

I **In** pleading of a Recovery, or a Fine, you need not ſet forth the Deeds which lead the Uſes, but to ſay, That the Recovery or the Fine (as the Caſe is) was levied to ſuch Uſes; and in Evidence you ſhall produce your Deeds to prove your Uſes. *Hill.* 8 *W.* *B. R.*

How to plead a Recovery, or a Fine to Uſes.

K **How** to plead a Common Recovery. *Lutw.* 1549. 2 *Lev.* 31. To Uſes. *Lutw.* 1550. 2 *Mod.* 70.

How to plead a Common Recovery.

The Huſband may declare the Uſes of the Wife's Fine, if ſhe doth not diſſent; but the Wife cannot do it.

A **The** Huſband ſolely may declare the Uſes of the Wife's Land, if her Diſſent be not proved: But the Wife cannot do it without her Huſband's Conſent.

What Limitation for Writs of Error to reverſe Recoveries. 10 & 11 W. 3. cap. 14.

B **No** Writ of Error ſhall be brought to reverſe a Common Recovery after twenty Years, *per Stat.* 10 & 11 *W.* 3. *cap.* 14. See Title **Error.**

It ſhall bar a Poſſibility, but not a Condition.

C **A Recovery** ſhall not bar a Condition, but it ſhall bar a Poſſibility; and if Recoveries ſhould not be admitted to bar Poſſibilities, they would endure for ever, and Perpetuities be thereby introduced: But ſee 2 *Rep.* 52. *b.* where it ſhall bar a Condition.

Where a Fine or Recovery ſhall extinguiſh a Condition, and where not.

D **Where** a Fine or Recovery ſhall extinguiſh a Condition. 2 *Rep.* from 73. to the End. And where they ſhall not. *Ibid.* 73. *a.*

No Averment can be againſt precedent Indentures.

But upon Indentures ſubſequent there may.

E **When** precedent Indentures are made, and afterwards a Recovery is had, no Averment can be taken by Parol, that the Recovery was to other Uſes than thoſe in the Indenture; for nothing veſts till the Recovery is had. But upon an Indenture ſubſequent, an Averment may be taken, that other Uſes than in the Indenture were declared, were expreſs'd and limited, before and after the Time of the Recovery. 9 *Rep.* 10. *b.* 11. *a.*

Now all Declarations ſhall be good by Deed made, or to be made; and this is by the Statute of 4 & 5 Ann.

F **Now** by the Statute of 4 & 5 *Annæ*, reciting that it hath been doubted, whether after the Statute of *Frauds and Perjuries*, Declarations of Uſes, Truſts or Confidences (*Note*, That Statute mentions only Truſts or Confidences) of Fines or Recoveries, manifeſted by Deed made after ſuch Fines or Recoveries, are good in Law; it is declared, That all ſuch Declarations of Uſes, Truſts or Confidences of any Fines or Recoveries, by any Deed already made, or to be made, by the Party who is by Law enabled to declare ſuch Uſe or Truſt, after the levying or ſuffering of ſuch Fine or Recovery, ſhall be as good and effectual in Law, as if the ſaid Statute of *Frauds and Perjuries* had not been made.

Where a Recovery deſtroys a Power.

G **Tenant** in Tail, with Power to make a Jointure, ſuffers a Recovery, this deſtroys the Power. 2 *Lev.* 61.

A Recovery in a Lord's Court, is no Bar without a Cuſtom.

H **A Common Recovery** ſuffered in a Lord's Court is no Bar, unleſs there is a Cuſtom for ſo doing. 1 *Lev.* 136.

It may be of a Rent or Advowſon.

I **A Common Recovery** may be of a Rent. *Lutw.* 1224, 1225. Or of an Advowſon. 5 *Rep.* 40. *a. b.* 41. *a.*

A **The** Widow, Tenant for Life, Remainder to her Son *T.* in Tail, Remainder to *W.* in Fee. A *Præcipe* is brought againſt the Feme Tenant for Life, who vouches *T.* This Recovery ſhall bar *W.* in Remainder, notwithſtanding the Statute of 14 *Eliz. cap.* 8. 2 *Rep.* 60, 61. *Cro. Eliz.* 562. *pl.* 12.

Tenant for Life, Remainder in Tail, Remainder in Fee: A *Præcipe* is brought againſt Tenant for Life, who vouches the Remainder in Tail, this is a Bar. 14 **Eliz. cap.** 8.

B **No** Eſtate-Tail is preſerved by the Statute of 34 *H.* 8. *cap.* 20. but may be barr'd by Recovery, except only Eſtates-Tail created by Letters Patent; or where the Eſtate-Tail is of the King's Proviſion; not where it is of the Gift or Creation of a common Perſon without the King's Proviſion. 2 *Rep.* 15. *a. b.*

What Eſtates-Tail are preſerv'd by being barr'd by 34 **H.** 8. **cap.** 20.

C **A Recovery** will bar a Contingent Remainder, but not an executory Deviſe. See *Pell & Brown in Cro. Jac.* and *Gardner & Sheldon in Vaughan.*

Will not bar an executory Deviſe, but it will a contingent Remainder.

D **A Recovery** bars not where there is not a Privity in Law; it ſhall bind only the Iſſue of Tenant in Tail, and alſo thoſe in Reverſion or Remainder; not where there is an executory Eſtate. *Carter* 53. But it ſhall bar all Proviſo's, Conditions, *&c.* depending upon an Eſtate-Tail. *Plunket & Holmes,* 12 *Car.* 2. *B. R.* and *Goodyear & Clarke,* about the ſame Time.

What it bars, and what not.

Bars Proviſo's, Conditions, *&c.*

E **What** Recoveries ſuffered by Infants are good. See Title **Infant,** and **Error.**

Of Recoveries by Infants.

F **Where** it bars an Eſtate-Tail. 3 *Salk.* 296.

Bar.

G **See** ſeveral Precedents of Recoveries ſuffered by Infants, but diſallowed. *Salk.* 567.

Infant.

H **A Recovery** to *A. & Ux'* for Life, Remainders to the Heirs Males of *A.* on the Wife begotten, *A.* can't dock this Remainder during his Wife's Life. *Ibid.* 568.

Remainder.

I **In** a Recovery the Tenant to the *Præcipe* was made by a Fine, which was after reverſed, yet good. *Ibid.*

Tenant to the *Præcipe.*

K **And** if the Tenant gains the Freehold at any Time before Judgment, 'tis good. *Ibid. Comberb.* 425.

The like.

L **Alſo** Non-Tenure is cured by a ſubſequent Purchaſe. *Salk.* 569.

Non-Tenure.

M **A Recovery** ſuffer'd to *A.* and the Heirs of her Body by one of the Name of *Searle,* is an Eſtate-Tail. *Ibid.* 570.

Eſtate-Tail.

N **A Condition** that runs with the Land can't be barr'd by Recovery, *aliter* of a Condition collateral. *Ibid.*

Condition.

O **Tenant** in Tail, and he in Remainder may be vouched jointly. *Salk.* 571.

Joint Vouchees.

If

Voucher.

If the Tenant vouches a Stranger, who vouches A Tenant in Tail, and he enters into Warranty, 'tis good. *Ibid.*

Privity.

And Tenant in Tail coming in as Vouchee comes B in in Privity of all Eſtates he ever had. *Ibid.*

Rectory.

See **Quare Impedit.**

A Rectory, what.

A Rectory is a Thing which conſiſts of divers C Things, as Glebe, Tithes, &c. 2 Leon. Caſe 13. and for which an Ejectment will lie. See Title Ejectment.

Reddidit ſe.

See
- **Bail.**
- **Ca. ſa.**
- **Proceſs and Proceedings.**
- **Scire facias.**

Reddidit ſe, what.

Reddidit ſe is in Caſe where a Man procures D Bail for himſelf to an Action in any Court of Law, if the Party bailed, at any Time before the Return of the ſecond Sci. Fa. againſt his Bail, renders himſelf in Diſcharge of his Bail, they are thereby diſcharged.

When the Bail are diſcharged upon the Defendant's rendering himſelf into Cuſtoſty.

If the Defendant render himſelf to Cuſtody in E Diſcharge of his Bail upon the Day of the Return of the ſecond *Sci. fa.* againſt the Bail *ſedente Cur.* or if an Action be brought upon the Recognizance, if he render himſelf upon the Day of the Return of the Proceſs againſt the Bail *ſedente Cur.* the Bail are diſcharged. *Paſch.* 21 *Car.* 2. *Per Magiſtrum Liveſay & al'.*

A **If** a Defendant renders himſelf in Diſcharge of his Bail after Judgment, yet if the Plaintiff commits him not in Execution in two Terms following, he ſhall be diſcharged upon Common Bail, as if he were committed for want of Bail upon an Action: The Manner whereof, ſee in Title **Priſoner.** *Paſch.* 21 *Car.* 2. Or he may move the Court to be diſcharged, unleſs the Plaintiff will charge him in Execution.

The Defendant is not in Execution upon a *Reddidit ſe*, until the Plaintiff hath prayed it.

When he may be diſcharged by Default of the Plaintiff.

B **Where** any Defendant renders himſelf to the Marſhal, upon any Action in this Court, and in Diſcharge of his Bail, the Defendant's Attorney ſhall forthwith give Notice of ſuch Render to the Plaintiff's Attorney, and ſhall make Oath thereof before the Bail-piece be filed.

What the Defendant's Attorney muſt do upon the Defendant's rendering of himſelf in Diſcharge of his Bail.

C **Alſo** it is ordered, That if any Perſon who is Bail for any Defendant, ſhall be impleaded by Action upon the Recognizance, ſuch Perſon may render the Defendant into Cuſtody in Diſcharge of his Bail, by the Space of eight whole Days in full Term next after the Return of the *Latitat*, or other Proceſs ſued forth againſt ſuch Bail, upon Notice thereof to the Plaintiff or his Attorney in the ſaid Suit; and all other Proceſs againſt the Bail in ſuch Suit upon the Recognizance ſhall ceaſe.

What Time the Bail hath to render the Principal.

D **A** *Ca. ſa.* was returned *non eſt inventus* againſt the Principal, and one *Sci. fa.* and *Nichil*; and upon the ſecond *Sci. fa.* he renders himſelf, and was received: But if there had been a *Sci. feci*, and Judgment thereupon, he had come too late. *Cro. Jac.* 109. *pl.* 5.

When a Perſon may render himſelf in Diſcharge of his Bail, and when not.

E **A Man** was Bail upon a Writ of Error, and upon a *Sci. fa.* againſt him he pleads that the Principal render'd himſelf to the *Malſhalſea*, to be chargeable with the Execution, and to diſcharge his Bail: But adjudged to be no Plea; for the Recognizance is not to render his Body, but to pay the Debt adjudged, and is grounded upon 3 *Jac.* 1. *cap.* 8.

Bail upon a Writ of Error cannot render the Principal in Diſcharge of themſelves, and why. 3 **Jac.** 1. **cap.** 8.

F **A** *Reddidit ſe* will not diſcharge the Bail, unleſs the Attorney who is concerned for the Defendant or his Bail, enters the *Reddidit ſe* in the Marſhal's Book, and gives Notice thereof to the Plaintiff's Attorney, and brings the Bail-piece to the Secondary, who, upon producing of a Note from the Marſhal or his Clerk, that the Defendant is in Cuſtody, will diſcharge it: But till this is done, the Plaintiff may notwithſtanding proceed to Judgment and Execution againſt the Bail; for until the Bail-piece is diſcharged, there is a Record ſtill remaining in Court againſt the Bail: And ſo it was adjudg'd in this Court in one *Streater*'s Caſe, 15 *Car.* 2.

How and by what Means the Bail are to be diſcharged upon a *Reddidit ſe*.

Rediſſeiſin, See **Aſſize.**

Reference.

Reference, what.

Reference in the Acceptation of Law is where a Matter of Fact is referred by the Court of Chancery to a Maſter; and by the Courts at Law to a Prothonotary or Secondary, to examine and report to the Court.** A

In Debt, if the Defendant before he pleads offers Principal and Intereſt, the Matter ſhall be referred to the Secondary.

It was ſaid, *Hill.* 1658. to be the uſual Practice B of this Court, ſince the new Regulation of the Chancery, in an Action of Debt upon an Obligation, if the Defendant do, before he pleads, offer to pay the Principal, Intereſt and Charges to the Plaintiff, to refer the whole Matter to the Secondary to ſtate the Buſineſs betwixt them, and to ſtay the Proceedings in Law in the mean time, but before the Rule can be drawn up, the Money muſt be brought into Court. *Vide ante* **Payment.**

Matters of Fact not to be referred to the Secondary.

Matters of Fact in Difference betwixt Party and C Party in a Cauſe depending in this Court, are not to be referred to the Secondary; for ſuch Matters are triable by the Jury who is to try the Cauſe; but Matters concerning the due Proceedings, or undue Proceedings in the Cauſe, by either of the Parties, are properly to be referred unto him, and for him in ſome ordinary Caſes to compoſe the Differences betwixt them, and in others to make his Report to the Court, how the Matters do ſtand (*Paſch.* 1650. *B. S.*) That they may ſettle the Differences according to Rules and Orders of the Court.

When one of the Parties may proceed in the Reference alone, if the other do not attend.

If a Matter in Difference betwixt the Plaintiff D and Defendant be referred to the Secondary, and one of the Parties will not attend at the Time appointed by the Secondary for that Purpoſe after Notice thereof given, to hear the Buſineſs referred; the other Party may proceed in the Reference alone, and get the Secondary to make his Report without hearing of the other Party. (*Trin.* 1651. *B. S.*) For one Party cannot compel the other to attend; and therefore ſuch References would many Times take no Effect for want of the Preſence of both Parties, if a Report may not be made notwithſtanding one of them refuſeth to attend; and if he be prejudiced by not being heard before the Secondary, it is his own Fault that he would not attend as the Rule directed.

Regiſter.

A **A**NNO 7 *Annæ*, there was an Act made, entituled, *An Act for the publick regiſtering of Deeds, Conveyances, Wills, and other Incumbrances which ſhall be made of, or that may any ways affect any Honours, Manors, Lands, Tenements and Hereditaments within the County of* Middleſex, *after the 29th Day of* September, 1709. See the Act.

The Title of the Act for Regiſtring of Conveyances, Wills, and other Incumbrances for Lands in the County of *Middleſex*.
7 Annæ.

B The Fees for regiſtring of Wills, and granting of Probates by the Statute of 21 *H.* 8. *cap.* 5. See Title **Probate.**

Fees for regiſtring and Probates of Wills.
21 H. 8. cap. 5.

C What is a good Regiſtring of a South Sea Contract within the Stat. of 7 *Geo.* 1. *Seſſ.* 2. *cap.* 1. *Mod. Caſes in Law and Equity* 173.

Rejoinder.

See { **Juſtification.**
Pleas and Pleadings.
Replication. }

D **A Rejoinder is where the Defendant makes Anſwer to the Plaintiff's Replication; and it ought to be a ſufficient Anſwer to the Replication; and alſo to follow and enforce the Matter of the Bar.**

A Rejoinder, what.

F When a Replication is pleaded, which is iſſuable, the Clerk of the Papers, when he makes up the Paper-Book, doth of Courſe make up the Rejoinder, and joins the Iſſue in it; ſo likewiſe if the Rejoinder be iſſuable, he makes up the Surrejoinder to it, and joins the Iſſue in it.

When the Clerk of the Papers makes up the Rejoinder.

Rejoinder is not good if it depart from the Plea in Bar.

If the Defendant do in his Rejoinder depart A from his Plea pleaded in Bar, this Rejoinder is not good. (*Mich.* 22 *Car. B. R.*) For this is to ſay and unſay, which the Law doth not allow; for Pleas muſt be plain and certain, and by the doing thereof the Cauſe depending is hindred from coming to a certain Iſſue.

One may not rejoin on Words that are not in the Declaration or Replication.

One ought not to rejoin upon ſuch Words B which are not contained in the Declaration or Replication. (*Mich.* 22 *Car. B. R.*) For that is for the Party to frame a Diſcourſe of his own, and not to anſwer the Plaintiff's Matter alledged, and ſo is to no Purpoſe. See after **Replication.**

Where the Iſſue may be upon the Rejoinder or Replication.

Where the Iſſue may be upon the Rejoinder or C Replication. *Lutw.* 1641.

Relations.

Relations, what.

Relations are but Fictions, which ſhall not D prejudice the King by foreign Conſtructions. Cro. Car. 423.

Of Judgments.

Where a Judgment ſhall relate to the Day of E Filing the Original and bind the Lands, and not only from the Time of the Judgment given. *Carth.* 245.

Of Words.

Where a ſubſequent Word ſhall relate to a Thing F preceding. *Ibid.* 261.

Of Acts.

Where a ſubſequent Act ſhall relate to one pre- G cedent. 3 *Salk.* 182.

Of Judgments.

Where it ſhall be *ad proximum antecedens. Ibid.* H 199.

Judgment muſt relate to the Eſſoin-Day, that I being the firſt Day of the Term. 3 *Salk.* 212, 345. *Vide Cro. Car.* 102. The Difference between the Relation of Judgments in the Common Pleas and the King's Bench.

Releaſe.

See {**Executors.** **Suſpenſion.**

A **A Releaſe is the giving or diſcharging of the Right or Action which any Man hath or claimeth againſt another, or his Land, and is always by Deed.**

A Releaſe, what.

B **Where-ever** a Releaſe of Lands is made, it is abſolutely neceſſary that he to whom the Releaſe is made, be in Poſſeſſion of ſome Eſtate at the Time of the Releaſe. *Litt. Sect.* 447.

Releaſee muſt be in Poſſeſſion at the Time of the Releaſe made.

C **If** there be two Jointenants, and the one for Money grants, bargains, ſells, and confirms to the other; reſolved this amounts to a Releaſe. *Raym.* 187, 413, *&c.* See 2 *Saund.* 96.

One Jointenant ſells to the other; it is a Releaſe.

D **It** cannot be conſtrued to be the Intent of the Party to releaſe an Agreement made to himſelf when he joins another in the ſame Releaſe, who was not Party to the ſaid Agreement. *Id.* 393.

It ſhall not be conſtrued that the Party deſigned to releaſe an Agreement made to himſelf, if another be join'd with him in the Releaſe.

E **That** a Releaſe is an abſolute Defeaſance. 2 *Saund.* 48.

A Releaſe is a Defeaſance.

F **If** the Defendant in an *Ejectione firmæ* will not defend the Title of the Land in Queſtion, in Caſe the Verdict paſs againſt the Plaintiff, the Ejector may releaſe the Coſts to the Plaintiff. (*Hill.* 1649. *B. S.* 11 *Feb.*) For he is the Defendant in Law, although the Title do not concern him; and it is the other's Fault that he was not himſelf made Ejector to defend the Title, by which Means he might have had the Coſts.

Where the Ejector may releaſe Coſts to the Plaintiff.

G **One** is not bound to give a Releaſe unto the Sheriff for Monies which he receives from him, which he levied for him by virtue of an Execution; but he muſt give him a Note under his Hand that he hath received it. (*Hill.* 1650. *B. S.*) By *Rolle* Chief Juſtice, *Quære tamen*, Whether he be bound to give him ſuch a Note

No Releaſe need be given to the Sheriff for Money levied by Execution.

more than a Releaſe? For the Sheriff is an Officer of the Law, and upon Payment of the Money the Law gives him his Diſcharge.

What Words are requiſite in a Conveyance by Leaſe and Releaſe.

A **Where** an Eſtate is conveyed by Leaſe and Releaſe, there in the Leaſe for a Year there muſt be the Words *Bargain and Sell* for Money; but if it be not ſo, but only the Words *Demiſe, Grant, and to Farm let*, in that Caſe the Leſſee cannot accept of a Releaſe of the Inheritance until he hath actually entred, and is in Poſſeſſion; for till his Entry he hath but *Intereſſe termini:* But in the other Caſe of the Words *Bargain and Sell*, the Bargainee for a Year is immediately in Poſſeſſion upon the executing of the Deed.

Where a Releaſe is made the Eſtate muſt be turned to a Right.

B **Alſo** it is neceſſary that in all Caſes where a Releaſe is made, the Eſtate be always turned to a Right; as in Caſe of a Diſſeiſin, *&c.* where there are two Rights, 1. A Right of Poſſeſſion in the Diſſeiſor. 2. A Right to the Eſtate in the Diſſeiſee. Now when the Diſſeiſee hath releaſed the Diſſeiſor, here the Diſſeiſor hath both the Rights in him, *viz.* The Right to the Eſtate, and alſo to the Poſſeſſion; or elſe that there be Privity of Eſtate between the Tenant in Poſſeſſion and the Releaſor, for a Releaſe will not operate without Privity.

The ſeveral Ways that Releaſes operate.

C **Releaſes** work ſeveral Ways: Some by Way of Enlargement of Eſtates, ſome by way of *Mitter l'Eſtate*, ſome by way of *Mitter l'Droit*, and ſome by way of Extinguiſhment. *Co. Litt.* 273. *b.*

A Right or Title to a Freehold *in Præſenti* or *Futuro* may be releaſed in five Manners.

D **A Right** or Title to a Freehold or Inheritance, be it *in Preſenti* or *Futuro*, may be releaſed in five Manners. 10 *Rep.* 48. *a. b.*

E 1*ſt*, **To** the Tenant of the Freehold in Fact or in Law, without any Privity.

2*dly*, **To** him in Remainder.

3*dly*, **To** him ſeiſed of the Reverſion, without any Privity.

4*thly*, **To** him who hath a Right in reſpect of the Privity; as if a Tenant be diſſeiſed, the Lord may releaſe his Services.

5*thly*, **In** Reſpect of Privity only, without Right: As if Tenant in Tail makes a Feoffment in Fee, the Donee after the Feoffment hath no Right: But yet in reſpect of the Privity only, he may releaſe to him the Rents and Services, ſaving the Fealty: But no Eſtate can paſs to him by the Releaſe, who hath no Eſtate in Privity. 10 *Rep.* 48. *b.*

A Releaſe to a Tenant at Sufferance is void.

F **A Releaſe** to Tenant at Sufferance is void. 3 *Leon. Caſe* 204. *Note*, There is no Privity between the Owner of the Eſtate and the Tenant at Sufferance.

A Releaſe of a future Intereſt in a Chattel to the Deviſee in Poſſeſſion ſhall extinguiſh it.

G **A Releaſe** of a future Intereſt in a Chattel, being made to the Deviſee in Poſſeſſion by a Deviſee of a Term, to one and the Heirs of her Body after the

the Death of the Deviſee in Poſſeſſion, ſhall extinguiſh the future Intereſt. 10 *Rep.* 48 to 52.

A Releaſe before Execution is no Bar, and why.

A **A Releaſe** to a Purchaſor of the Land by the Conuſee of a Satute before Execution is no Bar. 10 *Rep.* 50, 51. For the Conuſee at the Time of the Releaſe had no Right or Cauſe of Demand in the Land, for the Land is not the Debtor, but the Perſon; and till Execution ſued, he had no Right or Demand in the Land. *Cro. Eliz.* 552.

A Man cannot releaſe a Thing which he hath no Demand to.

B **A Man** promiſed a Widow that if ſhe would marry *J. S.* he would pay her 40 *s.* yearly after the Death of *J. S.* ſhe married *J. S.* who died, and brought her Action for this 40 *s. per Ann.* the Defendant pleads the Releaſe of *J. S.* It is no Plea; for it is no Demand during his Life, nor could be ever demanded by him. *Cro. Jac.* 222. *pl.* 2.

Leſſor releaſes to the Leſſee all Demands. *Quid operatur* by it.

C **Leſſee** for Years in Poſſeſſion releaſes to the Leſſor all Demands; and the Leſſor releaſeth to the Leſſee all Demands; this is not a Surrender of the Leaſe, neither is the Leſſee's Eſtate enlarged by the Leſſor's Eſtate: For the Word *Demand* doth not enure to give away or extinguiſh that which a Man hath in his Poſſeſſion, but ſuch Things only which he hath not in his Poſſeſſion, as Choſes in Action, Rents, and ſuch like. *Dal.* 85. *pl.* 45.

A Releaſe of all Actions doth not releaſe a Covenant to do a collateral Act, but a Releaſe of all Covenants had been a Bar.

D **A Man** covenants to do a collateral Act; before a Breach of this Covenant a Releaſe of all Actions, Suits and Quarrels ſignifies nothing; for before Breach there is not any Duty or Cauſe of Action; for the Breach ought to precede: But had the Releaſe been of all Covenants, there before a Breach, it would have barred. 1 *Rep.* 112. *b.* 5 *Rep.* 71. *a.*

E **Where** a Power of Revocation is preſent, and not after a Death, *&c.* it may be extinguiſhed by a Releaſe made by him who hath ſuch Power, to any one who hath the Freehold in the Land in Poſſeſſion, Reverſion or Remainder. 1 *Rep.* 113. *a.*

A Releaſe of all Covenants before any broken, diſcharges the Bond.

F **Upon** a Bond for Performance of Covenants, the Obligee before any Breach releaſes all Covenants, and afterwards a Covenant is broken, the Obligation is not forfeited, but is diſcharged. 3 *Leon. Caſe* 105.

A Releaſe cannot diſcharge a Duty not then in Being.

Nor a future Duty.

G **Debt** for the Arrears of an Annuity; the Defendant pleads a Releaſe of all Actions before the Day of Payment; after Oyer and Demurrer, held to be no Plea; becauſe a Releaſe cannot diſcharge a Duty not then in Being. *Cro. Eliz.* 897. *pl.* 20. *Co. Litt.* 292. *b.*

A Releaſe of all Demands is no bar to a Covenant not broken, but a Releaſe of all Covenants is a bar.

H **In** Covenant the Defendant pleads a Releaſe of all Actions, Duties and Demands, dated three Days after the Deed dated; and held to be no Bar; for being a Covenant future, and not in Demand at

the

the Time of the Releaſe made, but to be performed after, this Releaſe is no Bar; but a Releaſe of all Covenants would have been a Bar. *Cro. Jac.* 170.

Covenant by an Aſſignee; the Defendant pleads a Releaſe of the Covenantee after the Commencement of the Suit.

Where ſuch a Releaſe ſhall be a Bar, and where not.

A **Covenant** brought by an Aſſignee; the Defendant pleads a Releaſe from the Covenantee dated after the Commencement of the Suit, and held to be an ill Plea: For 1*ſt*, The Covenant goes with the Land, and the Aſſignee ſhall have the Benefit of it. 2*dly*, Though the Breach was in the Aſſignee's Time, yet if the Releaſe had been by the Covenantee (under whom the Plaintiff claims) before any Breach or Suit commenc'd, it would have barr'd the Aſſignee from bringing his Action; but the Breach being in the Aſſignee's Time, and the Action brought by him, and ſo attach'd in his Perſon, the Covenantee cannot releaſe this Action, wherein the Aſſignee is intereſted. *Cro. Car.* 503. *pl.* 4.

In what Caſes a Releaſe of all Actions real and perſonal, is a good Bar.

B **A Releaſe** of all Actions, real and perſonal, is a good Bar in Waſte, or *Quare Impedit. Litt. Sect.* 492, 493. But a Releaſe of all Actions generally is better than to ſay, all Actions Real and Perſonal. *Ibid. Sect.* 500.

A Man is bound to pay 20 *l.* at *Michaelmas*, a Releaſe of all Actions before *Michaelmas* is a Bar, and why.

C **Where** a Man is bound to pay 20 *l.* at *Michaelmas*, a Releaſe of all Actions before *Michaelmas* is a perpetual Bar; and yet the Plaintiff could not have his Action until after *Michaelmas*: For it is *Debitum in præſenti*, although *ſolvendum in futuro. Litt. Sect.* 512.

How to plead a Releaſe *Puis darrein Continuance.*

D **How** to plead a Releaſe *Puis darrein Continuance.* See Title **Pleas Puis darrein Continuance.**

A Releaſe of one Plaintiff in Errors ſhall not bar the other Defendant.

E **Two** Defendants in Ejectment bring Error, and after *In nullo eſt erratum*, one of the Plaintiffs in Error releaſes all Errors; and void as to the other, but ſhall bar the Releaſor. *Cro. Jac.* 117.

Where a Releaſe to the Principal is a Releaſe to the Bail upon a Writ of Error.

F **After** Judgment, and a Writ of Error brought, and Bail put in upon it, a Releaſe of all Debts, Judgments and Executions to the Principal diſcharges the Bail; for the Bail is not to pay the Money in the Principal's Default of Payment; and it is a good Releaſe to the Bail, for they are bound in a Sum certain; and it is not like *Hoe*'s Caſe in *Coke*, where they are not bound in a Sum certain. *Cro. Jac.* 401. *pl.* 10.

How pending the Writ and before Iſſue.

G **How** to plead a Releaſe pending the Writ, and before Iſſue. *Lutw.* 1177 to 1179.

In Replevin againſt five, a Releaſe to two pleaded.

H **In** Replevin againſt five, a Releaſe to two of them pleaded. *Idem.* 1175.

A **A Future** Act cannot be releaſed by a Releaſe of all Demands, *viz.* a Promiſe or Covenant not broken: But a Releaſe of all Promiſes ſhall releaſe a Promiſe not broken. *Lutw.* 249, 250. So of Covenants; ſee in this Caſe much good Matter.

Where a future Act may be releas'd, and where not.

B **A Duty** certain may be releaſed before the Day of the Performance of the Condition: But a Duty uncertain at firſt, upon a Condition precedent to be made certain afterwards, is in the mean Time but a meer Poſſibility which cannot be releas'd. 5 *Rep.* 70, 71. *a.* 10 *Rep.* 11. *a.* *Cro. Eliz.* 580, 581.

A Duty certain may be releas'd, not a Duty uncertain.

C **A Releaſe** where there is not any Intereſt to be releaſed, is void. 3 *Leon. Caſe* 340.

A Releaſe where no Intereſt is to be releas'd, is void.

D **An** Acknowledgment under Hand and Seal, that he is ſatisfied of all Bonds entred into by the Defendant to him, or that the Defendant is diſcharged of all Bonds entred into by him; this in Judgment of Law is a Releaſe and a Diſcharge of Bonds. 9 *Rep.* 52. *b.*

An Acknowledgment of Satiſfaction, or of a Diſcharge of all Bonds, is a good Releaſe in Law.

E **General** Words reſtrained by the particular Occaſion thereof. 3 *Lev.* 275. *Show. Rep.* 151. See Title **Executors**.

How general Words reſtrained.

F **A general** Releaſe relating to a particular Perſon, ſhall not bar by the general Words, but only for that Purpoſe. 2 *Lev.* 214, 215, 216.

To what Purpoſe a Releaſe ſhall bar.

G **A Bond** entred into to *A.* to the Uſe of *B.* *B.* cannot releaſe this Bond. 1 *Lev.* 235.

Bond entred into to *A.* to the Uſe of *B.* *B.* cannot releaſe it.

H **Obligee** in Truſt for another releaſes to the Obligor all Demands upon his own Account; this doth not releaſe the Obligation. 1 *Lev.* 272.

A Releaſe of the Obligee in Truſt ſhall not bar.

I **A Releaſe** before any Rent due, of all Demands that the Plaintiff had or ſhould have againſt the Defendant, this doth not releaſe the accruing Rent. *Co. Litt.* 291. 1 *Lev.* 99. 2 *Lev.* 210.

A Releaſe of all Demands ſhall not releaſe the accruing Rent.

K **An** Award was made the 24th of *March*, that the Defendant ſhould pay the Plaintiff at *Michaelmas* 20 *l.* for Non-payment whereof the Action was brought; the Defendant pleads a Releaſe of all Demands 10 *Apr.* and the Court held that this was not any Bar. *Cro. Jac.* 300. *pl.* 4.

An Award to pay 20 *l.* at *Michaelmas*, the Defendant pleads a Releaſe after the Award; this is not any Bar.

L **In** Conſideration that the Plaintiff had lent him 10 *l.* and had aſſigned over a Bond to him, and had promiſed to releaſe him from all Demands, he promiſed that if the Money was not received upon the Bond, he would at *Michaelmas* pay 20 *l.* the Plaintiff avers all done on his Part, and that the 20 *l.* was not paid; the Defendant pleads the Releaſe, and held to be no Plea; for the Releaſe is Part of the Conſideration,

So where the Releaſe is Part of the Conſideration, it cannot be pleaded.

Alſo it doth not releaſe what is future.

and the Cauſe which gives the Action, and without making of it, he could not maintain his Action: Alſo it doth not releaſe what is future. *Cro. Jac.* 623. *pl.* 15.

Trover againſt two; one pleaded Not-guilty, and the other a Releaſe, the Jury found the firſt guilty, and alſo the Releaſe.

A Releaſe to one is a Releaſe to all.

Trover againſt two; one pleads a Releaſe, and A the other Not-guilty; the Jury find him guilty who pleaded Not-guilty, and alſo found the Releaſe for the Party who pleaded it: The Judgment was thereupon ſtayed; becauſe a Releaſe to one joint Treſpaſſer is a Releaſe to all the reſt: Though they may ſever in pleading, yet one Jury ſhall aſſeſs Damages for all. *Hob.* 66. For the Plaintiff having joined and made him Defendant with one to whom he had releaſed; the Releaſe ſhall enure to diſcharge him who pleaded Not-guilty. 6 *W.* & *M.*

In an Aſſize by two, the Releaſe of one ſhall not bar the other.

In an Aſſize by two, the Releaſe of one of the B Plaintiffs is no Bar for the Land, nor for the Damages, becauſe they enſue the Reality. *Cro. Eliz.* 649.

Where a Releaſe of one ſhall not prejudice the others.

See much good Matter where the Releaſe of one C ſhall not bar the others joined with him. *Cro. Eliz.* 648. *pl.* 4.

A Releaſe by an Infant without Conſideration, is void.

Two Executors; one an Infant who releaſes D without any Conſideration; it is void. *Cro. El.* 671. *pl.* 27.

Leſſee for Years.

Leſſee for Years releaſes to him in Reverſion, it E is good by Surrender: But if Tenant for Life releaſes to him in the Reverſion, it is by way of Releaſe, and not of Surrender. 1 *Lev.* 47. See *Dal.* 32. *pl.* 17.

Leſſor grants his Reverſion, and afterwards releaſes the Covenants to the Leſſee before Breach, it is void.

Leſſor grants his Reverſion, and afterwards re- F leaſes the Covenants to the Leſſee before Breach; it is void. 2 *Lev.* 206.

A Releaſe cannot be for a Time, or upon a Condition, but it ſhall be for ever.

But it may be delivered as an Eſcrow.

A Man cannot releaſe upon Condition, nor for G a Time, but the Condition is void, and the Time is void; but it ſhall enure to whom it is made for ever, becauſe it operates by Way of Extinguiſhment: But a Releaſe may be delivered as an Eſcrow, to be his Deed when ſuch a Thing is performed. *Keilw.* 88. *a.*

Covenant not to ſue, where it is a Releaſe, and where not.

A Covenant not to ſue is an abſolute Releaſe: H But a Covenant not to ſue within a particular Time, is no Releaſe; and if a Suit be brought within the Time, the Remedy muſt be by Action of Covenant. *Show. Rep.* 46, 47. *Cro. Eliz.* 352. *pl.* 7.

Jointenants may releaſe to each other.

Jointenants may releaſe and confirm to each I other. *Vaughan* 145.

A **After** Lands are extended upon an *Elegit*, and conveyed over to ſeveral Perſons, the Plaintiff in the Judgment releaſes all Judgments and Executions; an *Audita Querela* well lies. *Cro. Car.* 214. *pl.* 4. See **Audita Querela.**

A Releaſe of all Judgments and Executions by the Plaintiff after an Extent upon an *Elegit* diſcharges it, and an *Audita Querela* well lies.

B **A Bond** was dated 1 *Maii* 10 *Car.* the Defendant pleads a Releaſe 1 *Junii* following; the Plaintiff craves Oyer of the Releaſe, which is of all Actions before 1 *Apr.* before the Date of the Releaſe; this is no Releaſe of all Actions to the Day of the Date of the Releaſe. *Cro. Car.* 426. *pl.* 18.

A Releaſe dated after the Bond, but to releaſe all Actions before the Bond.

C **Where** a Releaſe of Errors was pleaded upon a Writ of Error brought, the Judgment ſhall be *Nul capiat per breve.* 3 *Salk.* 214.

Releaſe of Errors.

D **A Releaſe,** how to be pleaded. *Ibid.* 274.

How to plead it.

E **A Covenant** never to take Advantage of a Deed, amounts to a Releaſe. *Ibid.* 298.

What amounts to a Releaſe.

F **Releaſe** of all Right to ſuch Lands will not releaſe a Judgment not executed. *Ibid.*

What will not releaſe a Judgment.

G **A Releaſe** to one Obligor is a Releaſe to both. *Ibid.*

Of a Bond.

H **A Defeazance** muſt contain proper Words of Defeazance, *&c. Salk.* 575.

Defeazance.

I **Covenant** not to ſue for a certain Time is not a Releaſe or Defeazance. *Ibid.* 573.

Covenant not to ſue.

K **Bond** from *A.* and *B.* to *C.* joint and ſeveral; a Covenant from *C.* not to ſue *A.* is not a Defeazance. *Ibid.* 575.

What not a Defeazance.

L **One** Deed is not to be conſtrued as a Defeazance of another without Neceſſity. *Ibid.*

M **A Releaſe** of all Demands to the Perſonal Eſtate of the Inteſtate releaſes not a Bond before Judgment and Execution. *Ibid.*

N **Where** one releaſes his Right he can't purſue his Action or Remedy. *Ibid.* 422.

Releaſe of Right.

O **But** if he has a Right and ſeveral Remedies, this Diſcharge of one Remedy does not the other. *Ibid.*

Proviſo.

P **Where** a Proviſo goes by Way of Defeazance of a Covenant, it muſt be pleaded on the other Side. *Ibid.* 574.

Q **But** otherwiſe where it goes by Way of Explanation or Reſtriction of the Covenant. *Ibid.*

R **A growing** Rent is not releaſed by a Releaſe of all Demands. *Ibid.* 578.

A growing Rent.

S **One** bound to releaſe on Payment of Money, is bound to releaſe on Tender and Refuſal.

Relief.

Relief.

See **Heriot.**

A Relief, what.

A **A Relief is not a Service, but is the Fruit of the Services; and it is as a Bloſſom fallen off from the Tree, and therefore the Defendant need not to avow upon any Perſon certain.** Penant's Caſe, 3 *Rep.* 66. a. Cro. Eliz. 885. pl. 26.

A Relief is twofold.

B **A Relief is twofold; that is to ſay, 1. A Relief at the Common Law; and, 2. A Relief grounded upon a Cuſtom.**

To whom, and by whom due.

C **A Relief** is due to the Lord from his Tenant in Fee only. *Keilw.* 82.

How recoverable.

D **What** Reliefs are, and how recoverable, ſee much good Matter. *Latch.* 37. 129.

Debt lies by an Executor againſt an Executor of an Heir who was to pay a Relief by 32 **H.** 8. **cap.** 37.

E **Debt** lies by an Executor againſt an Executor of an Heir, who was to pay a Relief. *Cro. Eliz.* 883. *pl.* 17.

Acceptance of the Rent of a new Tenant ſhall not diſcharge a Relief due from a former Tenant.

F **Acceptance** of the Rent of a new Tenant is no Bar of a Relief due from a former Tenant; becauſe now by 21 *H.* 8. *cap.* 37. he may avow upon the Land, and is not forc'd to avow upon the Perſon. *Moor, Caſe* 887.

An Avowry for a Relief, how it is.

A Flower of the Tenure.

G **An** Avowry for a Relief is good, without ſhewing particularly how due: Becauſe it is a Parcel of the Tenure *de communi jure*, and a Flower of the Tenure; and if ſeparated, muſt be ſhewn on the other Side. 3 *Lev.* 145.

How a Relief ſhall be recovered.

H **A Relief** is no Service, but an Incident to it, for which they may diſtrein, but cannot have an Action of Debt: But his Executors or Adminiſtrators may bring an Action of Debt for it, but cannot diſtrein. *Co. Litt.* 83. *a.*

How much the Relief is.

I **The** Lord of whom Soccage Land is held by Fealty, and a certain Rent upon the Death of his Tenant, ſhall have of the Heir ſo much as the Year's Rent amounts unto for a Relief, beſides the Year's Rent which the Heir muſt alſo pay. *Co. Litt.* 91. *a.*

Remainder.

See { **Recovery.** **Reverſion.**

A Remainder, what.

A **A Remainder of Land is the Land that ſhall remain after the particular Eſtate determined; as where one grants Lands for Years or Life, the Remainder to** J. S. viz. **When the Years are expired, or the Life is dead, that then the Land ſhall remain and come to J. S. and his Heirs. But** Note, **There muſt be Livery made upon the Leaſe for Years, or elſe the Remainder will not paſs.**

The three Things appointed by Law to every Remainder.

B **The** Law hath appointed three Things to every Remainder:

C Firſt, **An** Eſtate precedent, made at the ſame Time that the Remainder commences.

Secondly, **That** the particular Eſtate continues when the Remainder veſts.

Thirdly, **That** the Remainder be out of the Donor at the Time of the Livery. 1 *Plow.* 25. *a.*

Three Things to be had by a Remainder.

D **Three** Things one ſhall have by a Remainder, by a Conveyance at the Common Law:

E Firſt, **A Remainder** veſted.
Secondly, **Poſſeſſion** in Law.
Thirdly, **Poſſeſſion** in Fact. *Ibid.* 29. *a.*

How to be limited, and when to commence.

When created.

F **A Remainder** is an Eſtate limited in a Deed, (*Note*, Without a Deed or Will in Writing it cannot be created) to commence after the Determination of a particular Eſtate, whereon it muſt neceſſarily depend, and muſt be created at the ſame Time with the particular Eſtate, 3 *Rep.* 21 *Rep. a. b. Vaugh.* 269. The very Word Remainder imports as much, it muſt be a Remainder of ſomething which is in Being.

Of Things *Feræ Naturæ.*

A Man has the Property of Things killed in his own House *Feræ Naturæ* that are killed in his own Ground. *Salk.* 556. A

In Fiſh.

So one that has *Libera Piſcaria* has Property in the Fiſh (& *Co. Lit.* denied) *Salk.* 637. *Q.* 357. 3 *Salk.* 189, 291. B

Negroes.

What Property a Man has in Villeins and Negroes. *Salk.* 666, 7. C

Difference in Property.

A Difference in Property of Things having a Natural Exiſtence, and a Civil Exiſtence only. *Ibid.* 667. D

Confeſſion of Property.

Plea of taking by Diſtreſs for Rent does not confeſs Property, &c. *Vide Salk.* 640. E

Protection.

See Privilege.

Protection, what.

Protection is a Writ ſued out of the Chancery, which lies where a Man will paſs over the Sea in the King's Service; and by this Writ (when allowed in Court) he ſhall be quit of all Manner of Suits between him and any other Perſon, except Pleas of Dower, Aſſize of Novel Diſſeiſin, Aſſize of Darrein Preſentment, and Attaints, until his Return into England; and then there muſt iſſue out a Reſummons againſt him. F

To whom the Protection of *B. R.* is allowed.

The Protection of this Court is allowed for any Perſon who attends his own Buſineſs in this Court, or attends by Virtue of any *Subpœna* from this Court. G

Granted for a Witneſs againſt a Priſoner for High Treaſon.

The Protection of the Court of the King's Bench was granted to protect a Witneſs, that was to give Evidence againſt a Priſoner for the late Protector, upon an Indictment of High Treaſon. H

Outlawed Perſon ſhall not be protected.

Note, In the Caſe of one verſ. *Bright.* *Trin.* 1658. It was ſaid by *Glyn*, Chief Juſtice, That if one be outlawed, this Court will not protect him from being taken upon the Outlawry, in coming and going I from the Court if it be upon Buſineſs which concerns not that Outlawry; for it is no Reaſon that he that ſtands out in Contempt of the Law ſhould have any Protection by it.

A In an *Aſſumpſit*, a Protection under the Great Seal was brought into Court, for that the Defendant was in the Wars in *Flanders*; and it was allowed, though after an Exigent; but it ſhall not be allowed, after a *Capias Utlagatum*. 3 *Lev.* 332.

Writ of Protection ſhall be allowed in an *Aſſumpſit* after an Exigent, but not after a *Capias Utlagatum* executed.

B The King granted a Protection to one of his Debtors, until he was ſatisfied his Debt; and upon a Demurrer it was alledged, that by the Statute of 25 *Ed.* 3. *cap.* 19. theſe Protections are expreſly, That none ſhall be delay'd upon them; but the Party ſhall anſwer, and go to Judgment, and Execution ſhall ſtay: And the Court ordered here, That when it came to Execution they would adviſe, ſo a *Reſpondeas Ouſter* was awarded. *Cro. Jac.* 477. *pl.* 10.

A Protection pleaded, becauſe the King's Debtor.

25 Ed. 3. *cap.* 19.

Ordered, That the Plaintiff ſhould proceed to Judgment; and Execution to ſtay.

C A Protection obtained pending the Writ, is naught. *Latch.* 197.

It is naught pending the Writ.

D Alſo there ought to be a Cauſe ſhewn in a Protection for the granting of it. *Ibid.*

There ought to be a Cauſe ſhewn in it.

Proviſo in Deeds.

See **Expoſition of Writs.**

E **A Proviſo in a Deed is a Condition inſerted into a Deed, upon the Performance whereof the Validity of the Deed conſiſted; and ſometimes it is only a Covenant** ſecundum ſubjectam materiam. **See the Lord** Cromwell's **Caſe,** 2 Rep.

A Proviſo, what.

A Proviſo may be taken ſometimes,

The ſeveral Acceptations of a Proviſo.

For {
A Condition. A
A Limitation.
A Covenant.
A Declaration.
A Forepriſe, *ſecundum ſubjectam materiam.*
Davis & Kemp. Carter *fol.* 3. See *Popb.* 27.

Where it amounts to a Covenant in a Deed.

A Proviſo amounts to a Covenant in the Deed, B when they are mutual Words of both Parties. See 2 *Rep.* 70.

It always implies a Condition.

A Proviſo always implies a Condition, if there C be not Words ſubſequent which may change it into a Covenant: Alſo it is a Rule, That where the Proviſo is, that the Leſſee ſhall perform or not perform a Thing, and no Penalty is to it; this is a Condition, otherwiſe it is void: But if a Penalty be annexed, *aliter eſt.* See *Cro. Eliz.* 248. *vide* 1 *Lev.* 155.

If a Proviſo be inſiſted on at a Trial, to deſtroy a Deed, it muſt be proved that the Thing provided to be done was done or not accordingly.

If a Proviſo in a Deed be inſiſted upon at a Trial D to deſtroy the Deed in which it is, there muſt be punctual Proof, That the Thing provided to be done, or not done, was done, or was not done, according as the Proviſo directeth: *Mich.* 1650. *B. S.* For the Law doth not favour the Deſtruction of Deeds or Eſtates, but doth favour the Supporting and Maintenance thereof, as much as may ſtand with the Rules of Juſtice, and therefore doth require ſtrict Proof of Things, the doing or not doing whereof goes to the Deſtruction of the Eſtate.

How it muſt be when it makes a Conditional Eſtate or Intereſt.

Where it makes a Conditional Eſtate or Intereſt, E it muſt have theſe three ſeveral Qualities.

1. **It** muſt not depend upon another Sentence, F nor participate thereof; but ſtand originally of itſelf.

2. **It** muſt be the Words of the Bargainor, Feoffor, Donor, &c.

3. **That** it be compulſory to enforce the Bargainor, Feoffor, &c. to do ſuch an Act. 2 *Rep.* 70. *b.*

Where it makes a Covenant.

Where a Proviſo makes a Covenant. 2 *Rep.* Lord G *Cromwell*'s Caſe, 70, 71, 72, &c.

Where a Proviſo is, That the Leſſee ſhall do or not do ſuch a Thing, how it is.

It is a Rule in Proviſoes, That where the Pro- H viſo is, that the Leſſee ſhall do, or not do ſuch a Thing, and no Penalty is to it, this is a Condition; otherwiſe it is void. *Cro. Eliz.* 248. *pl.* 6. See *Cro. Car.* 128. *pl.* 3. 129.

A **If** a Proviſo be in the Negative, and makes a Reſtraint of the Common Law, it is a Condition. 3 *Leon.* Caſe 302.

Where a Proviſo makes a Condition.

B **Where** a Proviſo is a Parcel of the Sentence, which contains a Covenant, or abridgeth Parcel of the Covenant, there it doth not make a Condition, but an Exception. 4 *Leon. fol.* 73. See much of this Matter in *fol.* 70, 71, 72.

When it doth not make a Condition, but an Exception.

C **A Leaſe** for Years, Proviſo that the Leſſee ſhall not alien without Licence; the Leſſee deviſes it without Licence, this is a Breach of the Condition. *Cro. Eliz.* 60. *pl.* 2. and *fol.* 330, 331.

Proviſo not to alien, *ſans* Licence, is a Condition.

D **A Leaſe** for Life, Proviſo that he ſhall not take the Profits; or a Leaſe for two Years, Proviſo that he ſhall not occupy for one of the Years, is void. *Cro. Eliz.* 107. *pl.* 1.

Where a Proviſo ſhall be void.

E *A.* lets *B.* ſo many Rooms at ſuch a Rent, provided that *B.* ſhall gather the Rents of the Plaintiff's other Tenements mentioned in a Schedule, and pay them quarterly; and ſhews, to what the Rents in the Schedule amounted, and the Defendant hath not paid them: And held, that this is not a Covenant, but merely a Condition annexed to the Eſtate, which determined by not collecting and paying the Rents. *Cro. Car.* 128. *pl.* 3. 129.

Where a Proviſo is a Condition, and not a Covenant.

F **A Deviſe** to a Son and Heir; provided, and upon Condition, That if he do not pay 20 *l. per Ann.* to *B.* then *B.* to enter: This is but a Limitation, and not a Condition: For if it were a Condition, it would be void; becauſe no Perſon can enter for the Condition broken in a Deviſe, but the Heir at Law; and here the Eſtate is deviſed to him: And upon the Failure of Payment, then *B.* ſhall enter and have the Eſtate. And it is tantamount, as if he had deviſed the Lands to his eldeſt Son *quouſque* he ſhould make Default of the Payment of the 20 *l. per Ann.* *Borſton*'s Caſe, 3 *Rep.* 21. *a.* See *Carter* 171. And upon this Breach, or Nonperformance of this Limitation, the Deviſe to the Heir at Law ceaſes, and is veſted in *B.* without Entry or Claim.

Where a Limitation.

G **A Proviſo** will make an Eſtate to determine though there be no Words in it, that it ſhall be void, or to ceaſe. *Cro. Eliz.* 238. *pl.* 5.

Where it makes an Eſtate to ceaſe.

H **A Proviſo** by Way of Agreement to pay, amounts to a Covenant, and an Action well lies upon it. 1 *Lev.* 155. 2 *Rep.* 72.

When it is a Covenant.

I **Proviſo,** That if he be minded to revoke and declare his Mind in Writing under Hand and Seal, he may revoke: This is perſonal in the Party who is to revoke, and cannot be forfeited by any Treaſon committed by him. 1 *Lev.* 279. See a good Caſe upon this Matter. *Latch* 24, 25, &c.

What a Proviſo to revoke is.

How a Proviſo to make Leaſes ſhall be good, where the Eſtate paſſes by Tranſmutation of Poſſeſſion, and where of Eſtate.

A **How** a Proviſo to make Leaſes ſhall be good, and where not, where the Eſtate paſſes by Tranſmutation of Poſſeſſion, and where by Tranſmutation of Eſtate. 1 *Lev.* 30. See 1 *Rep.* 176. *b.*

Proviſo to make Leaſes, where void.

B **When** Uſes are raiſed by Covenant, in Conſideration of Paternal Love to his Sons or Daughters, and for Advancement of his Blood; and after, there is a Proviſo, That the Covenantor for good Cauſes may make Leaſes for Years; the Covenantor cannot make Leaſes for Years to his Sons or Daughters, or any of his Blood, or any other Perſon; becauſe the Power to make Leaſes for Years is void, when the Indenture was ſealed; for the Covenant upon ſuch general Conſideration cannot raiſe an Uſe. 1 *Rep.* 176. *b.*

And where not.

C **Note,** If the Uſes had been limited upon a Fine, Recovery or Feoffment, they had been good, becauſe of the Tranſmutation of the Eſtate; for thoſe Uſes ariſe without Conſideration.

A Proviſo, that the Eſtate ſhall ceaſe upon a Diſturbance of his Executors, is good.

D **A Proviſo** in a Deed, That if his Son ſhall diſturb the other Uſes, or not ſuffer the Executors quietly to carry away the Goods; that then the Term of ſixty Years to him, and the Uſes to the Heirs of his Body, ſhall ceaſe and be void. The Words of this Proviſo are ſufficient to ceaſe the Uſe for ſixty Years, and alſo to the Heirs of his Body. 8 *Rep.* 90. *a.* 91. *a.* And what Act ſhall be a Diſturbance. *Ibid.*

Where it is neither a Condition nor Covenant.

E **A Proviſo** of itſelf in a Deed which hath not any perfect Sentence annexed to it, is neither a Condition or Covenant. *Cro. Eliz.* 385.

F **Where** it makes a Covenant and where a Condition. 3 *Salk.* 102.

G **Of** Trying a Cauſe by Proviſo. *Ibid.* 362.

Vide poſtea, Title **Trial.**

Purchaſe and Purchaſor.

A **Purchaſe is a Title that a Man hath to Lands or Tenements, either by his own Act or Agreement, or elſe by Gift, Deviſe, &c. and not by Diſcent from any of his Anceſtors, or of his Couſins, but by his own Deed.** Lit. Sect. 12.

Purchaſe, what.

B **An** Alien cannot purchaſe Lands in *England*, becauſe by this Means the Realm would be impoveriſhed by tranſporting the Treaſure from hence into foreign Countries; and by putting thereby Part of the Lands of this Realm, that is to ſay, the Lands purchaſed by the Alien, under the Power of a foreign Prince: *Paſch.* 23 *Car. B. R.* For not only the Subjects Perſon, but his Eſtate alſo is in a Sort under the Power of his Prince.

An Alien cannot purchaſe, and why.

C **Every** Purchaſor ought at his Peril to take Notice of the Eſtates and Charges, which are upon the Land which he Purchaſes; for the Law preſumes, That no Man will purchaſe Lands without Advice of Counſel. 2 *Leon.* Caſe 89.

Every Purchaſor purchaſes at his own Peril.

D **What** Judgments ſhall affect Purchaſors, and what not; ſee ſeveral Acts in Title **Judgments.** See the Statute of 4 & 5 *W.* & *M. cap.* 16. Intituled, *An Act to prevent Frauds by clandeſtine Mortgages.* See the Statute 3 & 4 *W.* & *M. cap.* 14. Intituled, *An Act for Relief of Creditors againſt fraudulent Deviſes.* See the Statute of 4 & 5 *W.* & *M. cap.* 20. *For Docketting of Judgments.* See Title **Deviſes**, and Title **Heir.**

What Judgments ſhall affect Purchaſors, and what not.

See the ſeveral Statutes.
4 & 5 **W. & M.** cap. 16.
3 & 4 **W. & M.** cap. 14.
4 & 5 **W. & M.** cap. 20.

E **Where** an Eſtate comes to a Man from his Anceſtors without Writing, that is a Diſcent: But where a Man takes any Thing from an Anceſtor, or any Perſon, by Deed, Will, or Gift only, and not as Heir at Law; that is a Purchaſe.

The Difference between a Diſcent and a Purchaſe.

F **It** is a Rule in Law, That when an Eſtate is limited to an Anceſtor for Life, the Word *Heir* after cannot be taken for a Word of Purchaſe. 2 *Lev.* 60.

The Word *Heir* cannot be taken for a Word of Purchaſe, where an Eſtate for Life is limited to the Anceſtor.

What Heir muſt take by Purchaſe.

None can take as Heir by Purchaſe which is not a right Heir; nor by Diſcent, where the Eſtate was never executed in the Anceſtor. 2 *Lev.* 79. A

An Infant ſhall not have his Age when he takes by Purchaſe.

Where an Infant takes by Purchaſe, he ſhall be bound by a Condition, without Notice. 2 *Lev.* 21. See Title **Infant.** B

Where the Chancery will relieve Purchaſors of a Term againſt a Dormant Title.

The Chancery will relieve the Purchaſor of a Term againſt a Dormant Title, when Money hath been laid out upon Improvement. 2 *Lev.* 152. C

Deviſee for Payment of Debts ſells the Land, the Purchaſor is not bound to ſee the Money laid out.

Land is deviſed for the Payment of Debts, and the Deviſee is made Executor: The Purchaſor is ſafe in paying of his Money to the Deviſee, and is not obliged to ſee the Money applied for the Payment of the Debts. D

Remainder to the eldeſt Child, is a good Name of Purchaſe.

To a Man and his Wife for their Lives, Remainder to the Uſe of the eldeſt Child of his own Body in Tail; the Wife dies without Iſſue, he marries again and hath Iſſue a Daughter, and then a Son. Firſt Point, Whether eldeſt Child is a good Name of Purchaſe by Way of Remainder, he not being *in eſſe?* And held, That it was good; for a Perſon not *in eſſe* at firſt, may take a Remainder by Purchaſe, if he be *in eſſe* before the particular Eſtate ends: Alſo that the Remainder ſhall be in Abeiance until the Birth of the Child. E

Where one may take though not a compleat Heir.

An Heir, who is not ſo properly, and a compleat Heir, may take as a Purchaſor by the Intent of the Parties. 2 *Lev.* 79. *Per Hale.* F

Where the Heir ſhall take by Diſcent, and not by Purchaſe.

A. ſeized of Lands, *ex parte materna*, deviſes them for ſixteen Years, for the Payment of his Debts, and after to *J. S.* who is Heir *ex parte materna*: *J. S.* ſhall take by Diſcent, and not by Purchaſe. 3 *Lev.* 127. G

Iſſue and Baſtard are both good Names of Purchaſe.

Iſſue is a good Name of Purchaſe. *Moore*, Caſe 602. So alſo is Baſtard. *Ibid.* H

Purchaſor and Purchaſe.

Who is a Purchaſor, and what is a Purchaſe. *Mod. Caſes in Law and Equity* 170, 176, 177. I

Title againſt a Purchaſor.

Where a Perſon, knowing his own Title, does not give Notice of it to a Purchaſor, he ſhall never ſet it up againſt the Purchaſe. *Ibid.* 35. K

Heir.

The Difference where the Heir takes by Purchaſe, and where by Deſcent. 3 *Salk.* 392. L

The like.

Where the Name *Heirs* is a Name of Purchaſe, and not of Limitation. *Ibid.* M

The like.

Where the Heir ſhall take by Purchaſe, where by Deſcent. *Carthew* 273. N

Quae eſt eadem.

See { **Juſtification.** **Pleas.**

A **QUÆ** eſt eadem, **in Pleading, ſometimes ſupplies the want of a Traverſe.**

Quæ eſt eadem, what.

B **In** a *Clauſum fregit* ſuch a Day, the Defendant pleads the Plaintiff's Licence to enter on the ſame Day, and that *virtute inde* he entred; he need not ſay, *Quæ eſt eadem tranſgreſſio.* 21 *H.* 7. *fol.* 39. *a. pl.* 52.

Where *Que eſt eadem tranſgreſſio* muſt be pleaded in a Juſtification in Treſpaſs, and where not.

C **So** in Treſpaſs for taking of Goods, if the Defendant juſtifies the ſame Day and Place. *Ibid.*

D **So** in Treſpaſs and Battery, if the Defendant juſtifies that the ſame Day and Place the Plaintiff aſſaulted him, and that what Damages happened to him was of his own Wrong; this is good without *Quæ eſt eadem tranſgreſſio*; yet he doth not directly anſwer the Aſſault ſuppoſed by the Plaintiff. *Ibid.*

E **But** where he juſtifies at another Day, or other Place, then he ought to ſay, *Quæ eſt eadem. Ibid.*

Where it muſt be.

F **A Fact** laid to be *Nov.* 1. and a Juſtification *Nov.* 2. *Quæ eſt eadem*, is good without a Traverſe, the Day not being material; but it had been naught if the Day had been material. 1 *Lev.* 241.

Where good without a Traverſe.

G **Juſtification** in Treſpaſs *Quæ eſt eadem*, with a Traverſe of the Place, without a Traverſe of the Time, where good. 3 *Lev.* 227.

Traverſe of the Place without Traverſe of the Time, where good.

H **Where** *Quæ eſt idem reſiduum tranſgreſſion'* is not good. *Lutw.* 1486.

Where *Quæ eſt idem reſiduum tranſgreſſion'* is not good.

I **If** a Treſpaſs be alledged 10 *Nov.* and Juſtification the 11th of *Nov.* yet if there be an Averment of *Quæ eſt eadem*, it is good without a Traverſe. *Lutw.* 1457.

Where a Juſtification without a Traverſe, if there be an Averment.

K **Where** you juſtify *dicto tempore* in the Declaration, you need not to ſay *Quæ eſt eadem tranſgreſſio*; becauſe you agree with the Plaintiff in the Time and Place mentioned in his Declaration, and give an Anſwer to it. *Mich.* 5 *W.* & *M. B. R.*

Where you juſtify *dicto tempore*, you need not ſay, *Quæ eſt eadem.*

Where a Juſtification without *Quæ eſt eadem*, is good.

A **Treſpaſs** and Aſſault ſuch a Day and Place: The Defendant ſaith, That the ſame Day and Place he arreſted the Plaintiff by a Warrant; and held good, without ſaying of *Quæ eſt eadem tranſgreſſio*; becauſe the Defendant agrees with the Plaintiff, and anſwers him: But if he had juſtified at another Day or Place, then the Concluſion ought to be *Quæ eſt eadem tranſgreſſio*. Kitch. 237.

Battery in one County, and Juſtification of putting of him out of the Poſſeſſion of his Houſe in another County, *Quæ eſt eadem*, &c. is good.

Otherwiſe where the Action was Treſpaſs and Aſſault only.

B **Treſpaſs** and Aſſault in *London*: The Defendant juſtifies *molliter manus impoſuit*, to put him out of Poſſeſſion of his Houſe in *B. in Com. B. Quæ eſt eadem*, &c. and held a good Plea; becauſe the Juſtification is local, *viz*. The maintaining of his Poſſeſſion: But if it had been an Action of Battery, and the Defendant had juſtified by reaſon of an Aſſault C in another County, and traverſed the County in the Declaration, it had been ſtark naught; becauſe the Action of Battery only, without the Juſtification of the Poſſeſſion of the Houſe, is perſonal and tranſitory; and if the Battery was committed at *York*, it was committed in *London*. *Cro. El.* 705. and 842.

Quaere.

One under Arreſt may not enter into Bond to the Plaintiff for his Appearance.

D ONE that is under an Arreſt may not make an Obligation to the Plaintiff at whoſe Suit he was arreſted for his Appearance to his Action; (*Paſch.* 24 *Car. B. R. Paſch.* 1648. B. S. in *Leach* and *Davies* Caſe) becauſe if the Bond ſhould be ſued, the Defendant may plead the Statute of *Hen.* 6. thereunto.

If Leſſee for Years cuts down Timber, Trover and Converſion lies for Leſſor.

E **If** a Leſſee for Years cuts down Timber upon the Land let unto him, and carries it away from off the Ground, the Leſſor may well bring an Action of Trover and Converſion for the Timber; (*Mich.* 24 *Car. B. R.*) becauſe immediately upon the Severance from the Freehold, the Law caſts the Property on the Leſſor, which is called a general Property; but whilſt it ſtood the Leſſee had a ſpecial Property for Shadow and Maſt, *&c.* for his Cattle, which being cut down, his ſpecial Property is gone, and only the general Property left.

Whether a Fine levied of Land ſhall extend to a contingent Uſe.

F **Whether** a Fine levied of Land ſhall extend to a contingent Uſe of that Land. (*Mich.* 24 *Car. B. R.* In *Thomas* and *Kemiſhes* Caſe) It ſeems not, for the Uncertainty of the happening of it.

Quare Impedit.

A Quare Impedit is a Writ which lies where a Man hath an Advowſon, and the Incumbent dies, and another preſenteth his Clerk, or diſturbs me to preſent, I ſhall have this Writ.

Quare Impedit, what.

B **Where** the Writ is *ad præſentandum ad eccleſiam*, it intends the Right of the Advowſon and Parſonage: But when the Title is to the Vicarage only, there is a ſpecial Writ *ad præſentandum ad vicariam. Cro. Car.* 74. *pl.* 3. *Litt. Rep.* 50.

How the Writ is to be where it is brought for a Parſonage, and how for a Vicarage.

C **The** Plaintiff in his Count in a *Quare Impedit*, muſt alledge a Preſentation in himſelf, or in thoſe from whom he claims, *Vaugh.* 7, 8, 17, 57. So likewiſe muſt the Defendant, becauſe they are both Actors. *Ibid.* 7, 8, 57, 60.

How the Count to be.

How the Defence to be.

D **You** muſt in your Count alſo ſhew a Diſturbance before the Writ brought. *Hob.* 199.

A Diſturbance muſt be ſhewn in a Count upon a *Quare Impedit* before the Writ brought.

E **The** Points to be enquired of in a *Quare Impedit* by the Jury at a Trial.

The Points to be enquired of in a *Quare Impedit*.

F Firſt, **If** the Church be full or void.

Secondly, **If** full, then of whoſe Preſentation it is full.

Thirdly, **The** Annual Value of the Church; and this is not *ex officio* at Common Law, but by the Statute of *Weſtm.* 2. 6 *Rep.* 51. *a.*

Stat. Weſtm. 2.

Fourthly, *Si tempus Semeſtre tranſivit* after the Avoidance. 6 *Rep.* 49.

G **The** *Tempus Semeſtre* ſhall be ſix Calendar Months. 6 *Rep.* 61. *b.* 62.

The *Tempus Semeſtre*, how computed.

H *Frowick* in *Keilw.* 57. adds another Article, *viz.* For what Time the Church hath been full. See the Judgment in *Quare Impedit* there, and 6 *Co. Rep. Boſwell*'s Caſe.

Another alſo.

I **A** *Quare Impedit* was brought againſt the Archbiſhop, Biſhop and Clerk, and Proceſs continued until the Grand Diſtreſs returned, at which Day all the Defendants made Default; whereupon the Plaintiff made a Title to the Patronage to have a Writ to the Biſhop, and a Writ of Inquiry of Damages was awarded to inquire.

Judgment againſt the Defendant by Default after the Grand Diſtreſs returned.

A Writ of Inquiry awarded.

The Points to be inquired of.

Et de valore Eccleſiæ. A

Et quantum temporis elabitur a tempore quo Eccleſia illa incepit vacare.

Et ſit plena, necne.

Et ſi ſit plena, tunc ad cujus vel quorum præſentationem Eccleſia illa exiſtit, & inquiſitionem quam, &c.

The Judgment.

B **And** all theſe Points were found upon the Writ of Inquiry; and thereupon the Plaintiff had Judgment to recover his Damages, and his Preſentment. *Benl.* 137, 138. *Dyer* 241. *p.* 48.

For pleading in a *Quare Impedit.*

C **For** pleading in a *Quare Impedit*, and how to take a Traverſe upon a Traverſe in pleading, ſee *Hob.* from *fol.* 101. to 105. And where to plead the general Iſſue, *fol.* 103.

What Defendants and Diſturbers.

D **It** is adviſeable in a *Quare Impedit* to name no more than needs muſt; nor more Diſturbers than are likely to have reaſonable Titles. *Hob.* 320.

How a Parſon muſt plead.

E **A Parſon** cannot plead generally, but muſt ſay of whoſe Preſentation. *Hob.* 322.

The Writ muſt name the Patron, or it muſt abate.

F **A** *Quare Impedit* brought againſt the Biſhop and Incumbent, without naming of the Patron, ſhall abate. 7 *Rep.* 25. *b.*

Nonſuit or Diſcontinuance after Appearance, peremptory, and why.

G **If** the Plaintiff after Appearance in a *Quare Impedit* be nonſuited, it is peremptory: Becauſe the Defendant upon a Title made (whereby he becomes Actor) ſhall have a Writ to the Biſhop: So likewiſe in caſe of a Diſcontinuance. 7 *Rep.* 27. *b. Salk.* 539.

How the Writs are to be directed, where the two Archbiſhops are Plaintiffs.

H **If** the Archbiſhop of *Canterbury* be Plaintiff in a *Quare Impedit*, the Writ muſt be awarded to the Archbiſhop of *York*: So where the Archbiſhop of *York* is Plaintiff, it muſt be awarded to the Archbiſhop of *Canterbury*. *Show. Rep.* 329, 330.

For *Quare Impedits*, &c.

I **See** *Boſwell*'s Caſe, 6 *Rep.* from *Fol.* 48 to 53. for *Quare Impedits*, and Uſurpations, Admiſſions, Inſtitutions and Inductions.

How to count in a *Quare Impedit.*

K **Where** a Man ſhews a precedent Right, and then alledges a Preſentation in purſuance to that Right, it need not to be alledged to be *tempore pacis*: But where no Title is alledged, ſo that the Preſentation only makes the Title, there it muſt be ſaid to be *tempore pacis*. 1 *Mod.* 230.

What the Judgments in a *Quare Impedit* are.

L **There** are two Judgments in a *Quare Impedit*: One, That the Plaintiff ſhall have a Writ to the Biſhop; and this is the final Judgment that goes to the Right between the Parties, and is the Judgment at the Common Law: The other Judgment is to be given for Damages, ſince the Statute of *Weſtm.* 2. *cap.* 5. after the Points of the Writ are inquired into, which Judgment is not to be given, but at the Inſtance of the Party. 1 *Mod.* 254, 255.

Weſtm. 2. cap. 5.

A **The** Plaintiff in a *Quare Impedit* muſt recover by his own Strength, not by the Defendant's Weakneſs. *Vaugh.* 8, 38, 60.

How the Plaintiff muſt recover.

B **Where** the King or a common Perſon in a *Quare Impedit* ſets forth a Title, which is no more than a bare Suggeſtion, he ſhall not then forſake his own and endeavour to deſtroy the Defendant's Title. *Vaugh.* 61.

Where the Plaintiff ſhall not forſake his own Title to deſtroy the Defendant's.

C **Where** in a *Quare Impedit* a Title appears to the King upon the Record, the Court will award a Writ for the King; *aliter* where the Title appears to the King upon Evidence. *Moore*, Caſe 1214.

Where the Court will award a Writ for the King, and where not.

D **In** all *Quare Impedits* the Defendant may traverſe the Preſentation alledged by the Plaintiff, if the Matter of Fact will bear it; but the Defendant muſt not deny the Preſentation alledged, where there was a Preſentation. *Vaugh.* 16, 17.

Where the Preſentation may be traverſed, where not.

E **Where** the Preſentation, and not the Seiſin in Groſs, or Appendancy, is traverſable. *Vaugh.* 10, 11, 12, 13. And where the Seiſin in Groſs or Appendancy is traverſable. *Ibid.* 12.

Where in Groſs is traverſable, and where not.

F **It** was ſaid by the Counſel, That in a *Quare Impedit* the Preſentment ought always to be alledged in him who hath the abſolute Inheritance, and not in any other. *Cro. Eliz.* 518.

The Preſentmeut to be alledged in him who hath the Inheritance.

G **Where** a Preſentment is alledged in the Grantor and Grantee, the Preſentment in the Grantor is only traverſable, for that is the Principal. *Cro. El.* 518. *pl.* 44. See 5 *Rep.* 97. *a.* 98. *a.*

Where the Preſentment is only traverſable.

H **A double** Uſurpation ſhall bind the King that he may not have a *Quare Impedit*; for the King as to the Advowſon hath no greater Privilege than a common Perſon. *Cro. Jac.* 53, 54. But afterwards this Judgment was reverſed for this Cauſe, and adjudged, That two or three Uſurpations gains not ſuch a Poſſeſſion upon him, but that he may preſent upon Avoidance, or may grant it. *Cro. Jac.* 123. *pl.* 8.

A double Uſurpation ſhall bind the King, and why.

But afterwards adjudged, that it ſhould not.

I **Uſurpations** ſhall bind the Biſhop who ſuffers them, not his Succeſſors. *Cro. Jac.* 623. *pl.* 6.

An Uſurpation ſhall bind the Biſhop who ſuffers it, not his Succeſſor.

K **Where** the Parſon, Patron and Ordinary are ſued, and the Ordinary diſclaims, and the Parſon loſeth by Default, the Plaintiff ſhall have Judgment to recover his Preſentation, and a Writ to the Biſhop to remove him, with a *ceſſet executio*, until the Plea is determined between the Plaintiff and Patron. *Vaugh.* 6.

Judgment with a *ceſſet executio*.

L **The** Clerk is not bound to ſhew the Biſhop his Orders, but the Biſhop may examine him upon Oath, whether he hath Orders, or not; and as to

The Clerk not bound to ſhew his Orders.

the Letters Teſtimonial of his Good Behaviour and Sufficiency, the Biſhop ought to examine that himſelf; and if he defer the Admiſſion becauſe he is not reſolved therein, he is a Diſturber, if the Clerk come to him in convenient Time; and the Biſhop cannot refuſe a Clerk for want of Letters Teſtimonial. 1 *Leon.* Caſe 312.

Where the Biſhop cannot refuſe a Clerk.

What traverſable.

In a *Quare Impedit* the Seiſin is not traverſable, but the Preſentment. *Skin.* 657. A

How far a Non-denial is an Admiſſion.

The conſtant Courſe in a *Quare Impedit* is to alledge Seiſin generally; the Time of Seiſin is immaterial, and if it be not material the not denying of it is no Admiſſion, for Non-denial is only an Admiſſion of Things materially alledged. *Ibid.* 660. B

Plenarty.

Plenarty is no good Plea therein to bar the King's Right. *Mod. Caſes in Law and Equity* 8. C

How to declare.

A *Quare Impedit* is a poſſeſſory Action in which the Plaintiff muſt always declare upon his Poſſeſſion. 3 *Salk.* 293. D

Counter Plea.

The Biſhop can never counterplead the Plaintiff's Title without making a Title to himſelf, either as Patron or by Lapſe, for otherwiſe he hath nothing to grant Inſtitution. *Ibid.* E

Incumbent.

Of the Plea of an Incumbent in a *Quare Impedit. Ibid.* F

Pleadings.

Where the pleading a *Quare Impedit* was held not to be good. *Carthew* 312. G

Jointenants.

In a *Quare Impedit* the Plaintiff declares on an Agreement by Indenture between Jointenants to preſent by Turns. *Salk.* 43. H

Compoſition.

And ſee how a Compoſition or Agreement to preſent by Turns may be made. *Salk.* 44. I

Prerogative Turn.

In Caſe of a prerogative Turn the Writ is general *quæ ad noſtram ſpectat' donationem. Ibid.* 559. K

Seiſin.

'Tis ſufficient to lay a Seiſin *tempore pacis tempore Domini Regis. Ibid.* 561. L

Quaſhing of Indictments, Orders, &c.

B. R. may quaſh Indictments, Orders, &c.

Derivation of the Word.

The Court is not bound to quaſh Indictments, &c.

A This Court hath Authority to quaſh Orders of Seſſions, Preſentments, Indictments, &c. made in inferior Courts, or before Juſtices of the Peace, or other Commiſſioners, if there be Cauſe; that is, if they be defective in Matter or Form. (*Mich.* 22 *Car.* 1. *B. R.*) To quaſh comes of the *French* Word *Caſſer*, which ſignifies to break in Pieces, to cancel, deſtroy, make null or void. But this quaſhing is but by Favour of the Court; for the Court is not tied *ex officio* to do it, but may leave the Party to plead unto them, and to take Advantage of the Inſufficiency of them by pleading to them, as in many Caſes they uſe to do, although they know the Indictments to be inſufficient, *viz.* where the Indictment is for ſome Offence much prejudicial to the Commonwealth.

A Sheriff cannot move to quaſh an ill Return.

B In the Caſe of *Wells* and *Wells* (*Hill.* 1658. *B. S.*) it was ſaid by *Glyn* Chief Juſtice, That a Sheriff that makes an ill Return cannot move to quaſh it, tho' it was made upon a Miſtake; but muſt make a better, or elſe he is to be amerced. See Title **Reſcous.**

Reaſons for quaſhing an Indictment.

C An Indictment may be quaſh'd for falſe *Latin*, or for having in it inſenſible Words, or *Engliſh* Words, or for Defect in the Form of it. *Trin.* 23 *Car.* 1. *B. R.*

Indictment of Forcible Entry may not be quaſh'd after Verdict.

D The Court will not quaſh an Indictment of Forcible Entry after a Verdict found upon the Indictment againſt the Defendant, before hearing of both the Parties concerned in the Cauſe. (*Mich.* 23 *Car. B. R.*) For the Court hath regard to Verdicts, and will not make them fruitleſs without very good Cauſe ſhewn.

The Court will not quaſh an Information for a Fault in the Body of it; but Defendant muſt demur.

E The Court will not quaſh an Information for a Fault in the Body of it, but will leave the Defendant to demur unto it, if he believe it to be inſufficient; but it is otherwiſe of an Indictment. (*Paſch.* 1650. *B. S.* 24 *Maii.*) It ſeems it is becauſe Informations are uſually preferred for greater Offences than Indictments, and upon more ſolemn Advice.

Que Eſtate.

See **Preſcription.**

In what a Man may plead a *Que Eſtate*.

A **Man** cannot plead a *Que Eſtate* in an Eſtate-tail, or for Life, or Years; becauſe no Man can have his Eſtate: For if Tenant in Tail grants *Totum Statum*, this is good during his Life only, and the Grantee may plead this, and aver the Life of the Tenant in Tail; but he cannot plead it by a *Que Eſtate*. 1 *Rep*. 46. *a*. A

Not for a Thing in groſs.

A Man cannot preſcribe in a *Que Eſtate* for a Thing in groſs. *Cro. El.* 763. *pl.* 1. *Cro. Jac.* 673. *pl.* 5. B

Nor without ſhewing of the Deed.

A Man cannot ſhew a *Que Eſtate* without ſhewing the Deed how he came by it. *Cro. Jac.* 673. *pl.* 5. C

A *Que Eſtate* in the Leſſee, which ſhould have been in the Lord.

Lutw. 81. **A** *Que Eſtate* was alledged in the Leſſee, which ſhould have been, That the Lord in Fee of the Manor, and all thoſe whoſe Eſtates he hath, have Time out of Mind had Common for their Tenants and Farmers, *&c.* and therefore it was ill. D

None but Tenant in Fee can preſcribe in a *Que Eſtate*.

No Perſon can preſcribe in a *Que Eſtate*, but Tenant in Fee-ſimple. *Goldsb.* 198. E

A Copyholder cannot preſcribe in a *Que Eſtate*.

A Copyholder cannot preſcribe in a *Que Eſtate*. 5 *Mod.* 206. F

A *Que Eſtate* cannot be pleaded for a Thing that lies in Grant, but by Inducement.

It is not ſufficient to plead a *Que Eſtate* of a Thing which lies in Grant, unleſs it be by Inducement only. *Carter* 32. 2 *Mod.* 144. See 10 *Rep.* 59. *b*. G

When, where and how a *Que Eſtate* is to be pleaded.

When, where and how, a *Que Eſtate* is to be pleaded. 3 *Lev.* 19. and where not. *Keilw.* from *fol.* 4. to *fol.* 20. *a*. H

A *Que Eſtate* not to be in a Leſſee for Years.

Preſcription by a Tenant, who is Leſſee for Years, in a *Que Eſtate*, is naught. *Lut.* 81. and how it ought to be. *Ibid.* *Note*, The Reaſon why a *Que Eſtate* of a Term cannot be pleaded, is, becauſe a Term cannot be gained by Diſſeiſin, as a Fee may; nor by Occupancy as a Freehold; but by meſne Aſſignments. I

How it may be pleaded in a Stranger.

A Man may plead a *Que Eſtate* in a Stranger, becauſe he cannot know his Title: But he cannot K

plead

plead a *Que Eſtate* in himſelf, or thoſe under whom he claims; for there he muſt ſet forth the meſne Aſſignments. 1 *Lev.* 190.

A **Covenant** upon a Leaſe made by the Queen to *A. B.* and makes a Title to the Reverſion of the Term by divers meſne Conveyances, and brings the Term to the Defendant by a *Que Eſtate* he hath by divers meſne Conveyances: Here the pleading of a *Que Eſtate* in a Term in another Perſon, under which he doth claim, but is a Stranger, is good; becauſe he is not privy to the Eſtate and Conveyance of a Stranger: But to plead a *Que Eſtate* in himſelf in a Term, or in another under whom he claims, is not good. 1 *Lev.* 19.

Where a Title to a *Que Eſtate* in a Term in another is good.

B **A Man** cannot preſcribe by a *Que Eſtate* of a Rent, Advowſon, Toll, *&c.* but he may of a Manor to which theſe are Appendant. 2 *Mod.* 144.

A Man may preſcribe to a *Que Eſtate* in a Manor, but not an Advowſon.

C **A Thing** that lies in Grant cannot be claimed by a *Que Eſtate* directly by itſelf, but it may be claimed as appurtenant to a Manor by a *Que Eſtate* in the Manor. 1 *Mod.* 232. 2 *Keb.* 311. *pl.* 17.

A Thing that lies in Grant cannot be preſcribed for in a *Que Eſtate* directly of itſelf.

D **In** caſe of a Common or Rent, which paſſes by Deed only: If the Plaintiff ſhew a *Que Eſtate*, he muſt produce the Grant of it; but need not where he preſcribes for a Way: Becauſe it is but a Conveyance to the Action, which is grounded upon the Diſturbance done to the Poſſeſſion. 3 *Mod.* 52. *Cro. Car.* 575.

Where a *Que Eſtate* may be claimed by Deed, and how by a Preſcription.

E **Though** the Plaintiff in Debt for Rent may plead a *Que Eſtate* in the Defendant generally, without ſhewing how; yet where a Man claims under a *Que Eſtate*, there he ought to ſhew the ſeveral Aſſignments, for the Defendant may traverſe any of them. *Skin.* 303.

Traverſe.

F **In** Replevin the Defendant avows, the Plaintiff replies in Bar to the Avowry, and ſays, that King *James* was ſeiſed and granted to Sir *R.* who granted to *J. S.* and the *Que Eſtate* by divers meſn Aſſignments came to *J. D.* and he put in his Beaſts, to which Plea there was a Demurrer; and it was ruled for the Avowant, for the Plaintiff ought to ſhew that he put in his Cattle by the Licence of *J. D.* and ſhou'd therefore derive a Title to him. *Ibid.*

Title in Replevin.

G **A Preſcription** by a *Que Eſtate* is not good of a Term for Years. *Carthew* 432.

Term for Years.

H **A Termor** for Years cannot declare on a *Que Eſtate*. *Salk.* 563.

The like.

I **In** making Title, the Commencement of particular Eſtates muſt be ſhewn. *Ibid.* 562.

Particular Eſtates.

K **A Diverſity** therein between Counts and Avowries. *Ibid.*

Counts and Avowries.

Qui tam Suits, See **King**.

Quod permittat.

Quod permittat proſternere, what.

Quod permittat is a Writ which lies againſt any Perſon who erects a Building, tho' upon his own Ground; yet ſo near to the Plaintiff's Houſe, that it hangs over it, or elſe what he erects becomes a Nuſance to it. A

How to count upon this Writ.

How to count upon the Writ of *Quod permittat*. See 9 *Rep*. 53, 54. B

Quod permittat by Grantee of the Reverſion, againſt the Grantee of the Tort-Feazor.

A Man erected upon his own Ground a Houſe ſo near the Defendant's, that it hung over three Foot: The Man who had the Injury grants away his Houſe; then he who erected the Nuſance granted away his; and held, that the diſtilling of the Water in the Time of the Grantee of the Houſe was a new Tort: So that the Continuance of the Injury by the Tort-Feazor and his Feoffee to the Prejudice of another, ſhall be puniſhed by the Feoffee of the Houſe. 5 *Rep*. 100. *b*. 101. *a*. C

Where a Requeſt muſt be made to remove a Nuſance.

Where a Son upon Requeſt made (not without a Requeſt) doth not remove the Nuſance committed by his Father, a *Quod permittat* lies againſt him. 5 *Rep*. 101. D

Proſternere edificia.

See a *Quod permittat proſternere quædam edificia quæ* A. B. *defunct' levavit*, &c. Lutw. 1586. Who ſhall have it, againſt whom it lies, and where it ſhall be good. *Ibid*. E

For ſtopping up of Lights.

See a Count in a *Quod permittat* for ſtopping up of Lights. *Lutw*. 1586, 1587. F

Weſt. 2. cap. 24.

It extends not to the Alienee of an Aſſignee, *per* Statute of *Weſtm*. 2. *cap*. 24. *Lutw*. 1588. G

Quo Warranto.

See { Franchiſes. Preſcription.

A **Where a Man uſurps, and makes uſe of any Franchiſe that he hath no Right unto, then lies this Writ of** Quo Warranto, **to ſhew by what Title he claims them.**

Quo Warranto, what.

B A *Quo Warranto* was brought for Vexation, upon forty-eight Points; and the Court being moved in it, did order that the Proſecutor ſhould wave that *Quo Warranto*, and ſhould bring a new one, and therein inſiſt only upon three Points, but that he might proceed to a Trial upon his new *Quo Warranto*, in ſuch Time as he might have done upon the old, (*Hill.* 22 *Car. B. R.*) to the end he might not be delayed in his Proceedings by bringing of the new *Quo Warranto*.

Quo Warranto upon forty-eight Points; the Court order'd the Proſecutor to bring a new one, and inſiſt only on three.

C If ſeveral Privileges are granted in a Charter, and there is a Forfeiture of the Charter, for an Abuſer of one of the Privileges, and a *Quo Warranto* is brought and Judgment upon it, this is a Forfeiture of the whole Charter.

Abuſer of one Privilege is a Forfeiture of the whole Charter.

D By a Statute made 9 *Annæ*, it is enacted, That if any Perſon ſhall intrude into, uſurp, or unlawfully hold any Office or Franchiſe in any Corporation or Borough, then the proper Officer in the Queen's Bench, the Seſſions of the County Palatine, or Grand Seſſions in *Wales*, to exhibit an Information in the Nature of a *Quo Warranto* at the Relation of the Perſon deſiring to proſecute the ſame, and who ſhall be therein mentioned to be a Relator againſt ſuch Perſon ſo uſurping, intruding into, or unlawfully executing of ſuch Office or Franchiſe; and to proceed as in Caſes of Informations in the Nature of a *Quo Warranto*; and if ſeveral Rights of divers Perſons to the ſaid Offices or Franchiſes may be determined by one Information, then the Courts may give Leave to exhibit one ſuch Information againſt ſeveral Perſons to try their reſpective Rights thereto; and ſuch Perſon or Perſons,

Where an Information in the Nature of a *Quo Warranto*, and by whom to be exhibited.

9 Annæ.

The Proceedings to be thereupon.

May be againſt ſeveral Perſons.

When to plead, unleſs the Court gives further Time.

againſt whom ſuch Informations in the Name of a *Quo Warranto* ſhall be ſued, ſhall appear and plead of the ſame Term or Seſſions in which ſuch Information ſhall be filed, unleſs the Court ſhall give further Time to plead; and the Proſecutor ſhall proceed thereupon with the moſt convenient Speed that may be.

How Judgment to be if Defendant found guilty.

Coſts to be on both Sides.

A **That** if upon a Trial the Defendant or Defendants ſhall be found guilty, the Court may give Judgment of Ouſter againſt ſuch Perſons, and fine him or them, and that the Relator ſhall have his Coſts of ſuch Proſecution; and if the Defendant be found Not-guilty, he for whom ſuch Judgment is giyen ſhall have his Coſts againſt ſuch Relator.

The Courts may allow a reaſonable Time to plead, reply, rejoin or demur.

B **That** the ſaid Courts may allow to each, as well Proſecutor as Defendant, ſuch convenient Time to plead, reply, rejoin or demur, as they ſhall think to be reaſonable.

The Statute of *Jeofails* 5 **Annæ**, and all other of thoſe Statutes ſhall extend to them.

C **Alſo,** That the Act for the Amendment of the Law made 5 *Annæ*, and all other Statutes of *Jeofails* ſhall be extended to theſe *Quo Warranto's*.

The Defendant muſt in a *Quo Warranto* againſt him make a Title.

D **It** is not ſufficient for the Defendant to ſay in a *Quo Warranto*, that ſuch a Subject hath a lawful Intereſt to hold a Leet without making of any Title to himſelf; for the Writ is *Quo Warranto* he claims them. 2 *Leon.* Caſe 31.

How to plead in a *Quo Warranto*.

E **It** is not ſufficient in a *Quo Warranto* for the Defendant to ſay *non uſurpavit libertatis prædictas*, but he ought to ſay, *nec earum aliquam*. 3 Leon. Caſe 135.

In a *Quo Warranto*, a Preſcription to have free Warren in his own Manor, as well in the Freeholders Lands as his Demeſnes.

F **A Preſcription** to have free Warren in his Manor, is good; as well in the Lands of the Freeholders, as his own Demeſnes. *Cro. Car.* 311. *pl.* 2.

See the Stat. of *Quo Warranto*. 18 **E.** 1.

G **See** the Statute of *Quo Warranto* with the Comment upon it in 2 *Inſt.* 494, 495, *&c.*

How the Judgment in it to be.

When to be brought againſt particular Perſons.

H **Wherever** any Judgment is given for the King for a Liberty which is uſurped, it is *quod extinguatur*; and that the Perſon who uſurped ſuch a Privilege, *libertat' &c. nullatenus intromittat, &c.* which is the Judgment of Ouſter: But the *Quo Warranto* muſt be brought againſt particular Perſons. 4 *Mod.* 61.

When againſt a Corporation.

I **But** where it is for a Liberty claimed by a Corporation, there it muſt be brought againſt the Body Politick, in which Caſe there may be a Seiſure of the Liberties, which will not warrant either the Seiſure or Diſſolution of the Corporation. 4 *Mod.* 58.

A **How** to plead in *Quo Warranto*'s and to Informations in the Nature of *Quo Warranto*'s, and much good Matter thereupon. *Latch* 45, 46, 47. See alſo *Keilw*. from 137. *b*. to 152. *a*.

For Pleas in *Quo Warranto's*. An Account of ſeveral Years.

B **Where** there may be a ſecond Imparlance in a *Quo Warranto*. *Comb*. 12.

Imparlance.

C **Of** giving Judgment therein where Liberties are ſeiſed, *&c*. *Ibid*. 19.

Judgment.

D **A** *Quo Warranto* Information granted for uſurping the Office of Mayor *Leſtwithyel*. Mod. Caſes in Law and Equity 132.

For uſurping an Office.

E **Another** againſt the Steward of a Leet for impanelling a Jury not duly ſummoned. *Ibid*. 135.

Impanelling a Jury not ſummon'd.

F **A** Rule granted againſt divers claiming to be Capital Burgeſſes; and another to be Recorder of *Brecknock*. *Ibid*. 165, 6.

Burgeſſes and Recorder.

G **See** a Rule, *&c*. againſt the Mayor and Common Council of *Bedford*. *Ibid*. 35, 36.

Mayor and Common Council of *Bedford*.

H **On** that Information 'twas query'd, If the Verdict could be ſet aſide for Misbehaviour of a Juryman, and all the Judges of *England* divided. *Ibid*. 201, 2, 3.

Verdict, whether to be ſet aſide.

I **See** two Rules againſt two Perſons claiming to be Mayors, and others to be capital Burgeſſes of *Penryn*. *Ibid*. 215, 16.

Office of Mayor.

K **An** Information againſt *Pindar* for uſurping the Office of Mayor of *Penryn*. *Ibid*. 234.

The like.

L **The** Defendant (*Cracker*) found Guilty of uſurping the Office of Mayor of *Tregony* ſeveral Years, *&c*. fined 200 *l*. *Ibid*. 285, 6.

The like.

M **An** Information againſt the Mayor and Bailiff of *Whitchurch*, as being a Non-Reſident, and choſen by Non-Reſidents. *Ibid*. 35.

Non-Reſidence.

N **Note**, *Quo Warranto* Informations may be brought, with Leave of the Court, at the Relation of any Perſon deſiring to proſecute by Virtue of 9 *Annæ*, *cap*. 20. *Ibid*.

At whoſe Inſtance granted.

O **See** of Judgments in a *Quo Warranto*. *Carth*. 218.

Razure, See Deeds.

Recital

Recital and Miſrecital.

See { **Amendment.** **Evidence.** **Jeofail.**

A Recital, what.

A Recital is the making mention in a Deed or Writing of ſomething which hath been done before. A

Where a Statute miſrecited in Pleadings is help'd by the Statute of *Jeofails*.

If a Statute be miſrecited in pleading in a Matter which goes to the Ground of the Action, which B is brought upon the Statute; it is not helped after a Verdict by the Statute of *Jeofails*; but if it be miſrecited only in a circumſtantial Matter, and which goes not to the ground of the Action, it is helped after a Verdict by that Stat. (*Trin.* 1650. *B. S.*) For the Statute helps only Matters miſpleaded in Matter of Form, and not Matters of Subſtance. See Tit. **Pleas and Pleadings.**

Nul tiel Record is no Plea to a general Act miſrecited.

Nul tiel Record is no Plea to a general Act which C is miſrecited; becauſe the Judges are bound to take Notice of it, and the Party ought to demur. 8 *Rep.* 27. *b.* 28. *a.*

Recital of one Leaſe in another, is not a ſufficient Proof that there was ſuch a Leaſe.

The Recital of one Leaſe in another is not a D ſufficient Proof that there was ſuch a Leaſe as is recited, *Vaugh.* 74, 75. without producing of the Grant or Inrollment. 2 *Lev.* 109.

Where a Recital in a Deed ſhall be binding.

If I by my Deed recite that I am poſſeſs'd of an E Intereſt in certain Lands, and aſſign it over by Deed, and am bound in a Bond to perform all the Agreements in the Deed, if I be not poſſeſs'd of ſuch Intereſt, the Condition is broken. 1 *Leon.* 112. Caſe 164. And as a Recital of itſelf is nothing, yet being joined and conſidered with the reſt of the Deed, it is material. *Ibid.*

A Power may be well executed, tho' no Mention made in the Deed of it.

A Power may be well executed, though there is F no Recital made of the Power in the Deed for the Execution thereof. 1 *Lev.* 153.

Miſrecital of a Leaſe upon a Grant of a Reverſion, and good.

A Grant of a Reverſion on a Leaſe miſrecited, G and yet held good. *Hob.* 108.

A **The** Recital of a Leaſe in a Deed of Releaſe is good Evidence of a Leaſe againſt the Releaſor, and thoſe who claim under him. *Mod. Caſes* 44.

Recital of a Leaſe in a Releaſe is good.

Recognizance.

See { **Bail.** **Scire Facias.** **Statute.**

B **Some are for Debt, and ſome to appear at Seſſion or Aſſizes, and ſome for Bail.**

Recognizance, what.

C **A Recognizance** of Bail entered into in the Common Pleas, is entered ſpecially, *viz.* they are bound to pay a certain Sum of Money, if the Party condemned doth not pay the Condemnation, or render his Body to Priſon; but a Recognizance entered into in this Court, is entered generally, *viz.* that if the Party be condemned in the Action, he ſhall render his Body to Priſon, or pay the Condemnation, or the Bail will do it for them. (*Paſch.* 23 *Car. B. R.*) This is according to the ancient Cuſtom and Practice of each Court, who always keep up to their uſual Forms, for without Obſervation of Methods and Forms, there would be nothing but Confuſion.

How a Recognizance of Bail is enter'd in the CommonPleas, and how in *B. R.*

D **A Recognizance** entered into by Bail was ordered by the Court to be amended. *Cro. Jac.* 272. *pl.* 5.

A Recognizance entred into by Bail order'd to be amended.

E **A Recognizance** for Money lent, may be taken by the Chief Juſtices at any Time in Vacation: And although it is not a perfect Record until entred upon the Roll; yet when enter'd, it is a Recognizance from the firſt Acknowledgment, and binds Perſons and Lands from that Time. *Hob.* 196.

Recognizance for a Debt.

F **A Recognizance** to appear at Aſſizes or Seſſions, may be taken by any Juſtice of the Peace.

G **How** a Recognizance or Statute ſhall be diſcharged when ſatisfied. See *March* 159, 160. *pl.* 230.

How to be diſcharged when ſatisfied.

F **Debt** will lie upon a Recognizance. 2 *Leon. Caſe* 24.

Debt lies upon a Recognizance.

What is the proper Proceſs upon it.
What the proper Execution.

A *Sci. Fa.* is the proper Proceſs upon a Recognizance in Chancery, and upon a *Sci. feci* or two *Nichils* returned and a Judgment thereupon, the proper Execution is an *Elegit.* See *Cro. Jac.* 3. *pl.* 2. A

If the Extenders value too high, then what Remedy.

Upon an Execution upon a Recognizance for Debt, if the Land be extended too high, the Plaintiff may, at the Return of the Writ come into Court, and pray, That the Extenders may retain it, and that he may have Execution of their Lands, and this within the Equity of the Statute of *Acton Burnell. Cro. Jac.* 12. *pl.* 16. B

When the Lands of Bail become chargeable with the Recognizance.

Whether the Lands of the Bail are bound from the Time of the Recognizance entered into, or the Recovery of the Judgment againſt the Principal, well argued, but not reſolved. *Cro. Jac.* from 449, to 452. C

Eſtreat.

A Recognizance taken before a Juſtice of Peace and forfeited, and then removed into *B. R.* cannot be eſtreated. *Comb.* 3. D

Scire Facias.

But on a Recognizance in *B. R.* a *Sci. fac.* lies there before it is eſtreated into the Exchequer. *Ibid.* 385 E

Intereſt of the Conuzee.

Where two Statutes (or Recognizances) acknowledged at ſeveral Times are extended, the Conuzee of the latter Statute hath a Reverſional Intereſt wherein the Elder may be merged. *Ibid.* 77, to 82. F

How to be taken in *B. R.*

Recognizance in *B. R.* tho' taken at the Judge's Chamber, muſt be taken as if taken in Court. *Salk.* 564, 659. G

In *C. B.*

But *aliter* in *C. B.* for there it is to be declared on as taken at his Chamber. *Ibid. vide* 600, 659. H

At what Time it binds.

Recognizance of Bail in *C. B.* binds from the Caption; but in *B. R.* from the Entry only. *Ibid.* I

Superſedeas.

No *Superſedeas* to a *Certiorari* for removing an Indictment, unleſs Recognizance entered into of 20 *l.* *Ibid.* K

Aſſignment by the Conuzee.

The Conuzee of a Statute can't aſſign his Intereſt after an Extent and a *Liberate*, if the Conuzor continues in Poſſeſſion. *Ibid.* 563. L

Forfeiture of Recognizance.

Upon a Recognizance to proſecute with Effect, if the Plaintiff is neither nonſuited, nor the Judgment affirmed; yet 'tis a Proſecution with Effect, and the Recognizance is not forfeited. *Carth.* 519. M

Record.

See Amendment.

A Records are reſtrained to the Rolls of ſuch Courts only as are Courts of Record, and not to the Rolls of inferior Courts, or any other Court which do not proceed Secundum Legem & Conſuetudinem Angliæ; and if Records, being the Rolls or Memorials of the Judges of the Courts of Record, import in themſelves ſuch incontroulable Verity, that they admit of no Averment to the contrary. Co. Litt. 260. a.

Records, what.

B In the Caſe of *Dallington* verſ. *Sheppard*. *Trin.* 1657. in a Writ of Error. By *Glyn* Chief Juſtice. If after a *Revocetur niſi* is pronounced by the Court, and the Record is amended by Order of Court, the Record ought to be read again and opened before it can be a *Conſilium*; and this was ſo done in this Caſe, by *Twiſden* of Counſel for the Writ of Error.

After a *Revocetur niſi*, and the Record amended, it muſt be read again before it can be a *conſilium*.

C Where a Record tranſmitted by the Chancery into *B. R.* may be remanded into the Chancery. *Ibid.* 27.

A Record may be remanded into the Chancery.

D A *Habeas Corpus* is not a Record until it is returned and filed, and then it cannot be amended, but before it be filed it may. (*Hill.* 21 *Car. B. R.*) *Vide antea.*

When a *Habeas Corpus* is a Record.

E If the Writing or Form of a Letter in a Record be doubtful, ſo that it may be taken either for one Letter or another Letter, the Court will conſtrue it to ſtand for that Letter, that is for the maintaining and upholding of the Record, and not for that Letter which will go to the making of the Record erroneous and naught, *ut res magis valeat quam pereat.* (*Hill.* 21 *Car. B. R.*) For the Law doth delight to maintain the Reality and Being of Things, and favours not the Deſtruction and nullifying of them; and therefore if a Record be ſo penn'd, that the Words may receive a double Conſtruction, one to make the Record good, and another

If a Letter in a Record be doubtful, how the Court will conſtrue it.

another to make it erroneous, the Court will interpret the Words that Way, that will make the Record good, and not that Way which will make it erroneous, for ſuch Interpretation is more for the Advancement of Juſtice.

How Matter of Record muſt be proved.

A **A Matter** of Record muſt be proved by the Record itſelf, and not by Evidence; for no Iſſue can be joined upon it to be tried by a Jury, as it is of Matters of Fact. (21 *Car. B. R.*) For the Credit of a Record is greater than any Teſtimony of Witneſſes; but if the Jury do know there was ſuch a Record, they may find it though it be not produced.

When a Record certified from an inferior Court is ſaid to be in *B. R.* ſo as to be proceeded on.

B **A Record** certified out of an inferior Court upon a Writ of Error brought, is not ſaid to be in this Court to be proceeded upon before it be entered here, or be in the Office, altho' it be ſhewed there. (21 *Car. B. R.*) For before it becomes a Record of this Court, this Court is not poſſeſſed of the Cauſe.

It muſt be pleaded intire; and ſo muſt a Verdict find it.

C **A Record** ought to be pleaded intire, that is, the whole Record, and not Part of it, with an *inter alia*, in Reference to the Record, and ſo ought a Special Verdict to find a Record, unleſs in Caſe you plead a Judgment, or declare upon a Judgment in a ſuperior Court; for there you may ſay that the Plaintiff *recuperavit* againſt the Defendant generally, but in Caſe of Proceedings in a County-Court, there all the whole Proceedings muſt be ſet forth particularly, for that not being a Court of Record, every Proceeding therein is traverſable, (*Mich.* 22 *Car. B. R.*) For Part of a Record taken by itſelf, is not the Record, for a Record cannot be taken by Parcels, becauſe it is an intire Thing, except in the Caſe before-mentioned.

Verdict ſet aſide, certified as Parcel of the Record.

D **Where** the firſt Verdict which was ſet aſide only for the Inſufficiency of it in Point of Law, and not for undue Practice, or Misfeaſance, was certified as Parcel of the Record, as well as the laſt Verdict. 2 *Saund.* 254.

Record of an Act made *in præſenti*, muſt be in the Preſent Tenſe.

E **The** Record of the Court of an Act made by the Court *in præſenti*, always ought to be in the Preſent Tenſe. *Ibid.* 393.

Record amended after Demurrer diſcontinued.

F *Paſch.* 1659. The Court ordered a Record to be amended after a Demurrer to the Record was diſcontinued; for then it was as if no Demurrer had been.

Amendments of Records.

G **For** Amendments of Records, ſee the Statutes of 8 *H.* 6. *cap.* 15. and 27 *H.* 8. *cap.* 26.

The Court will not ſupply a Blank in a Record.

H **The** Court will not ſupply a Blank left in a Record to make it perfect, when before it was defective. (*Mich.* 22 *Car. B. R.*) For this were for the Court to make a Record, which is not their Office to do, but to judge of them, and by ſo doing the Party that might take Advantage of the Defect of the Record, would thereby be deprived of it, which the Court will be no Cauſe of.

A **The** Court would not take the Record of the Return of a *Mandamus* off the File, though both Parties conſented, not knowing of any Precedent for it; but they made a Rule that the Record ſhould be daſhed through in the Nature of a Cancellation. See *Raym.* 69.

The Court refuſed to take a Record off the File, tho' both Parties conſented.

B **Where** the Court takes Notice without pleading of a Record in the ſame Court although not entred on the ſame Roll. 3 *Lev.* 219. in *C. B.*

Where the Court will take Notice of a Record without pleading it.

C **If** the Record of the Iſſue made up ready for the Trial of the Cauſe be defective in ſome ſmall Thing which may be well amended without defacing of the Record; the Court upon a Motion will give the Party Leave to amend the Record, if he will pay Coſts to the Defendant, although it be entered for Trial; but the Court will not give Leave to amend, if it cannot be done without defacing and much altering of the Record. (*Mich.* 22 *Car. B. R.*) For the Records ought to be plain and fairly written, that there may no Queſtion ariſe how they are to be read.

Where the Court will give Leave to amend a Record, and where not.

D **The** Court will not make Application of a Record produced to the Matter for which it was produced, for the Benefit of the Party that doth produce it, but the Party himſelf or his Counſel muſt do it. (*Paſch.* 23 *Car. B. R.*) For if the Court ſhould do it, it would be for them to act the Part of Counſellors, and not of Judges, which they ought not to do.

The Party or his Counſel muſt make the Application of a Record.

E **A Tranſcript** of a Record, which Record was amended in the Common Pleas, may by Leave of this Court upon Motion, be amended here by a Clerk of this Court; but without Leave of the Court, nor out of the Court, it may not be done. (*Paſch.* 23 *Car. B. R.*) For a Record cannot be amended without a Rule of the Court grounded upon Motion, which is called the Leave of the Court, for the Court ſpeaks by their Rules.

A Tranſcript of a Record amended in *C. B.* may by Leave of Court be amended in *B. R.*

F **The** Judges cannot judge of a Record given in Evidence, if the Record be not *ſub pede ſigilli*, that is, exemplified under Seal; but a Jury may find a Record, although it be not ſo, if they have a true Copy proved to them, or other Matter given them in Evidence ſufficient to induce them to believe that there was ſuch a Record. (*Paſch.* 23 *Car. B. R.*) For the Judges are to judge only *de exiſtentibus apparentibus*, but the Jury are induced in their Conſciences by Things given in Evidence, which are but probable for the moſt Part; and accordingly they give their Verdict.

The Judges cannot judge of a Record unleſs it be exemplified.

But a Jury may find it without Exemplification.

G **If** a Record be removed into this Court by a Writ of Error, and the Defendant's Counſel in the Writ of Error doth not open the Record right as it is, unto the Court; this falſe opening of it ſhall

Miſtake of Counſel in opening a Record ſhall not prejudice the Plaintiff in a Writ of Error.

not be prejudicial to the Plaintiff in a Writ of Error, but he may afterwards, by opening of it right, rectifie the Miſrecitals. (*Trin.* 23 *Car. B. R.*) And in ſuch Caſes the Court will have Copies delivered to them, and if they ſee Cauſe have the Record openly read, that they may judge of it.

A Record contradictory in Appearance may be a Record.

A **A Record** may be contradictory in Appearance, and yet may in ſome Caſes be neverthele ſs a good Record. (*Trin.* 23 *Car. B. R.*) For the Law more reſpects the Reality of Things than outward Appearances.

A Record that is razed is good, if legible.

B **A Record** that is razed (if legible) remains a good Record, notwithſtanding the Razure in it; yet he that razed it, is not to go unpuniſhed for his Offence. *Mich.* 1649.

Faults of Clerks in Records removed from inferior Courts, amendable in *B. R.*

C **Apparent** Faults and Miſpriſions of the Clerks only in Records removed out of inferior Courts into this Court, are adjudged now to be amendable here by the Statute of *Jeofails.* (*Trin.* 23 *Car. B.R.*) But not other Faults or Errors in them. See the Statute.

Deed inrolled and Decree in Chancery no Records.

D **Neither** a Deed inrolled or a Decree in Chancery inrolled are Records, but it is a Deed and a Decree recorded. (*Mich.* 23 *Car. B. R.*) For a Record of a Court is made up in the Proceeding in ſome Cauſe proceeded in in that Court; and there is a great Difference betwixt a Record and a Thing recorded; for though every Record be a Thing recorded, yet every Thing recorded is not a Record.

Counſel muſt open the Record after it is read: But the Court may ſuffer it to be read afterwards.

E **When** a Record is to be read in Court, the Counſel at the Bar ought to open the Effect of the Record after it is read by the Clerk of the Court, by the Cuſtom of Practice; yet the Court may ſuffer it to be read afterwards if they pleaſe, and after reading it is then by Rule of Court made upon the reading, ordered to be ſet down for a *Concilium.* *Hill.* 23 *Car. B. R.*

Attorney to enter the whole Record before the Term after the Trial.

F **There** was a Rule of Court made, That every Attorney of the Court ſhall enter the whole Record upon the Roll after a Trial had in the Cauſe before the next Term after the Trial ſo had, upon pain of twenty Shillings, to be paid by every ſuch Attorney that ſhall not do it, towards the Relief of the Poor. (*Hill.* 1649. *B. S.*) That the Record may be ſpoken to the next Term after a Trial, if there be Cauſe; which cannot be done until the Record be perfected, and ſo by the not perfecting of it the Client is delayed; but there is now an Act of Parliament made 4 & 5 *W.* & *M.* to this Purpoſe, to which I refer the Reader.

A Record cannot be removed by Writ of Error before Judgment entred.

G **A Record** cannot be removed by a Writ of Error, until the Judgment in that Record be entered. (*Paſch.* 1650. *B. S.* 12 *Maii.*) For 'till then the Record is not perfected; the Writ of Error likewiſe ſays, *Si judicium inde redditum ſit tunc recordum & proceſſum prædict'*, &c.

A By *Rolle* Chief Juſtice, It was the ancient Cuſtom to enter the Record of the Cauſe before the Cauſe was carried down to the Aſſizes to be tried, (the Writ of *Niſi prius* being a Tranſcript thereof) but this Courſe was found to be inconvenient, becauſe it could not be amended after the Entry of it, and therefore now they uſe not to enter the Record of the Cauſe before the Trial be paſt; and therefore he ordered a Rule to be ſet up in the Office, That if the Trial do not proceed at the Aſſizes, at which the Record was carried down to be tried, and the Plaintiff will carry it down again, that he give the Defendant new Notice of the Trial; and ſo likewiſe is the Defendant to do where he intends to try the Cauſe by Proviſo, that the adverſe Party may not attend with his Counſel and Witneſſes to no Purpoſe. *Trin.* 1651. *B. S.*

The Record was formerly entred before the Cauſe was carried down to be tried.

How the Courſe now is.

B If a Record comes once into the King's Bench by a Writ of Error, the Record itſelf never goes out again: But a Tranſcript of it may go to the Houſe of Lords upon a Writ of Error.

Where a Record comes to the King's Bench, it ſhall not go out again.

C This Court will now amend a Record (upon the Return of a *Certiorari*) which is removed out of an inferior Court; and they will alſo amend a Record which is removed hither out of the Common Pleas by the Record of that Court brought into this Court, if they ſee Cauſe: And ſo they will do a Record removed out of the County-Palatine of *Cheſter*, *&c.* But formerly they would not amend Records out of inferior Courts, neither did they conſtrue the Statutes of *Jeofails* to extend to them: But the Law in both theſe Caſes is now altered by the Statute of 4 & 5 *Annæ*, *For Amendment of the Law.*

How Records are now amended in this Court which came out of other Courts.

Statute of *Jeofails* extends to inferior Courts.

D But if the Tranſcript of a Record be falſe, the Court will, upon a Motion, order a *Certiorari* to an inferior Court, to certify how the Record is below: And if it be upon a Writ of Error out of the Common Pleas, then they will grant a Rule to bring the Record out of the Common Pleas into this Court; and they will then order the Tranſcript to be amended in Court, according to the Roll in the Common Pleas.

How the Tranſcript of a Record upon a Writ of Error from an inferior Court ſhall be amended.

And how upon a Writ of Error out of the Common Pleas.

E See a Rule denied to make up a Record with an Arreſt of Judgment, in order to ſupport a Bill in Chancery againſt the Proſecutor. *Modern Caſes in Law and Equity* 45.

A Record with an Arreſt of Judgment deny'd to be enter'd.

F See where an Attachment was granted againſt an Aſſociate for amending a Record after Motion in Arreſt for the ſame Error. *Ibid.* 226.

Amendment without Leave.

G Where an Error may be aſſigned contrary to the Record. 3 *Salk.* 2.

Error contrary to the Record.

Nul tiel Record.

Where *Nul tiel Record* is pleaded, the Party cannot demur to ſuch Plea. 2 *Salk.* 566. 3 *Salk.* 294, 330. A

Oyer of the Record.

Where upon ſuch Plea 'tis proper to crave Oyer of the Record, unleſs it is in another Court. 3 *Salk.* 295. B

Prout patet per Recordum.

In Eſcape the Plaintiff did not alledge the Commitment *prout patet per Recordum*, but held well on a general Demurrer. *Salk.* 565. C

Certiorari.

On a *Certiorari* the very Record is return'd *Vide Certiorari. Ibid.* D

Acts of the Court and of the Party.

Acts of the Court upon Record may be altered the ſame Term, but of the Party not. *Salk.* 566, 567. E

Motion for a *Concilium.*

Roll of a precedent Term ought to be filed before any Motion is granted to make it a *Concilium. Ibid.* 565. F

Recovery.

See { **Baron and Feme.** **Conveyance.** **Deeds.** } { **Fine.** **Pleas.** **Uſes.** }

Recovery, what.

Recovery, which is in Latin Recuperatio id eſt, ad rem per injuriam extortam ſive detentam per ſententiam judicis Reſtitutio. *Co. Litt.* 154. *a.* G

Common Recovery, what.

But the Recovery intended here is fictio juris, or a Conveyance by Conſent, uſed for the better Aſſurance of Lands upon any Man, wherein the Recovery in Value, the ſuppoſed Recompence to him who loſeth the Land, is but a Fiction in Law; and this Recovery by Conſent is now become a common Aſſurance, upon which Uſes may be limited and raiſed. 1 Rep. 15. b.

Recompence in Value is not the ſole Reaſon why a Recovery bars.

Although the Recompence in Value is one main Reaſon that a Recovery bars, yet it is not the ſole Reaſon, for Recoveries are favoured, they being for the Preſervation of Eſtates, and become the common Aſſurances of the Nation, and ſhall not be taken ſo ſtrictly as real Recoveries are. H

A **Where** ſuperfluous Words in a Common Recovery ſhall not hurt it. 2 *Saund.* 296.

Where ſuperfluous Words ſhall not hurt.

B **That** Common Recoveries are greatly favoured in Law. *Ibid.*

Recoveries favoured in Law.

C **A Recovery** of Lands in a County-Palatine at *Weſtminſter*, is void. 1 *Saund.* 74. becauſe out of the Juriſdiction of the Courts at *Weſtminſter*.

At *Weſtminſter* of Lands in a County Palatine, void.

D **A Recovery** cannot deſtroy a Thing executory, which doth depend upon a Contingency. (*Paſch.* 24 *Car. B. R.*) Becauſe it was uncertain at the Time of the Recovery ſuffered whether it would ever be or no; and a Recovery cannot work upon ſo remote and uncertain an Eſtate.

Cannot deſtroy a Thing executory.

E **A Recovery** with ſingle Voucher is to bar the Tenant and his Heirs, of ſuch Eſtate Tail only as is then in him, and to bar others and their Heirs, of ſuch Eſtates as they have in any Reverſion expectant, or Remainder dependant upon the ſame; and alſo of all Leaſes and Incumbrances derived out of ſuch Reverſions or Remainders. *Noy* 81.

Who is barr'd by a Recovery with ſingle Voucher.

F **A Recovery** with double Voucher is to bar the firſt Vouchee and his Heirs, of every ſuch Eſtate as at any Time was in him, or in any of his Anceſtors; and alſo all other Perſons, of ſuch Right to a Reverſion or Remainder as were thereupon at any Time expectant or dependant; and of all Leaſes, Charges and Incumbrances derived out of any ſuch Reverſion or Remainder; and the ſame will be a perpetual Bar of ſuch Eſtate whereof the Tenant was then ſeiſed in Reverſion or Remainder expectant or demandant upon the ſame. *Nov.* 81, 82.

Who is barr'd by a Recovery with double Voucher.

G **A Recovery** with treble Voucher is to make a perpetual Bar of the Eſtate of the Tenant, and of every ſuch Eſtate of Inheritance as at any Time had been in the firſt or ſecond Vouchee, or any of them, or either of their Anceſtors, whoſe Heirs they are of ſuch Eſtate; and as well of every Reverſion thereon dependant, as alſo of all Leaſes, Eſtates, Charges and Incumbrances derived out of any ſuch Reverſion or Remainder. *Ibid.* 82.

Recovery with treble Voucher is a perpetual Bar of the Tenant's Eſtate.

H **It** is not neceſſary for the Judges to examine a Feme Covert, when ſhe joins with her Huſband to ſuffer a Recovery of her own Lands, becauſe it ſhall be ſuppoſed ſhe doth it freely and voluntarily; for the Law uſeth to make the beſt Interpretation of Things; yet it is prudential to do it, becauſe it may fall out that the Feme may be brought by Fraud or Force to do it, and the Law doth not favour the gaining of Eſtates by Force or Fraud. *Trin.* 1651. *B. S.* by *Rolle*, and he ſaid that he uſed to do it.

Judges need not examine a Feme Covert when ſhe joins with her Huſband in a Recovery of her own Lands.

I **A common** Recovery is by Uſage and Cuſtom become the common Aſſurance of the Nation. 5 *Rep.* 40. *b.* and is a Conveyance whereupon Uſes may be limited and raiſed. 1 *Rep.* 14, 61. 2 *Rep.* 74. *a.* Neither ſhall it be reverſed for Infancy. See Title **Error, Infant.**

A Recovery is the common Aſſurance of the Nation.

Nothing can bar a Tenant in Tail from ſuffering of a common Recovery.

A **No** Condition or Limitation, be it by Act executed, or by Limitation of an Uſe, or by a Deviſe in a Will, can bar Tenant in Tail to alien by Common Recovery. See *Litt. Rep.* 234. ſuch Condition is void.

What Remedy the Recoverors have to recover their Rents, Services and Cuſtoms.
7 H. 8. cap. 4. ſect. 2, 3.

B **Where** a common Recovery is ſuffered, the Recoverors, their Heirs and Aſſigns, may diſtrein for Rents, Services and Cuſtoms, and make Avowries for the ſame, as thoſe Perſons againſt whom ſuch Recovery is, ſhould have done, if the ſaid Recovery had not been; and ſhall recover their Coſts and Damages, 7 *H.* 8. *cap.* 4.

Termors and Tenants by Statute and *Elegit* ſhall enjoy their Eſtates againſt all Recoverors.
21 H. 8. cap. 15.

C **All** Termors and their Aſſigns, and Tenants by Statutes and *Elegit*, ſhall enjoy their Farms and Eſtates againſt all Recoverors upon feigned Recoveries.

The Party died the ſame Day that the Recovery was had, and good.

D **The** Party who ſuffered the Recovery, died the firſt Day of *Michaelmas* Term, between five and ſix in the Morning, upon which Day the Recovery was ſuffered; and adjudged good. *Shelley*'s Caſe, 1 *Rep.* from 93. to 106. *b.*

There muſt be a good Tenant to the *Præcipe.*

E **To** every Recovery there muſt be a good Tenant to the *Præcipe*, or elſe it is void.

To every Recovery it ſhall be intended that there was a good Tenant to the *Præcipe*, till the contrary be ſhewn by the other Side.

F **Where** a Recovery was produced in Evidence, the other Side inſiſted to have a good Tenant to the *Præcipe* proved. *Cur. contra*, For it ſhall be intended that there was a good Tenant to the *Præcipe*; and if it were otherwiſe, the Proof muſt come on the other Side. *Cro. Jac.* 455.

Tenant to the *Præcipe* before Judgment, is good.

G **A Tenant** to the *Præcipe pendente placito* before Judgment is well enough. *Show. Rep.* 347.

A Judgment to recover in Value is a Bar to an Eſtate-Tail.

H **A Judgment** given for Tenant in Tail to have in Value, is a Bar to an Eſtate Tail, although no Recompence be rendered in Value, &c. 10 *Rep.* 58. *a.* The Recompence in Value goes only to them who vouch, and have Loſs. *Plow. Com.* 514, 515.

Covinous Recoveries by Tenant for Life, &c. made void as to a Remainder-Man.
14 Eliz. cap. 8. Sect. 2.

I **Recoveries** ſuffered by Tenants for Life, Tenants by the Courteſy, and Tenants in Tail after Poſſibility of Iſſue extinct, by Colluſion, ſhall be void as to a Remainder-Man.

Tenant for Life, Remainder in Tail, a *Præcipe* is brought againſt them, and a Recovery had; this binds neither the Iſſue in Tail, nor Remainder-Man.

K **Tenant** for Life, Remainder to his eldeſt Son in Tail, Remainder to his ſecond Son in Tail; a *Præcipe* is brought againſt Tenant for Life, and the eldeſt Son, (*Note* it ſhould have been brought againſt Tenant for Life, and then the Remainder-Man ſhould have been vouch'd) and they ſuffer a a Common Recovery vouching the common Vouchee; this doth not bar the Intail, nor the Remainder, neither are the Iſſue in Tail barr'd by it. *Cro. Eliz.* 670. *pl.* 26.

A **A Fine** and Recovery of *Ceſtuy que Truſt* ſhall bar and transfer a Truſt as it ſhould an Eſtate at Law, if it were upon a good Conſideration. *Chanc. Rep.* 49.

Where a Recovery ſhall bind a Truſt.

B **Tenant** in Tail mortgages for Years, and afterwards marries, and ſuffers a Recovery for his Wife's Jointure; this Recovery ſhall enure to make good the Mortgage, though deſigned only for the Marriage Settlement: So alſo in the Caſe of a Judgment; for a Recovery ſhall enure to make good all his precedent Acts, *Chanc. Rep.* 120.

Tenant in Tail mortgages for Years, and after ſuffers a Recovery upon another Occaſion; this ſhall enure to make good the Mortgage.

C **All** Recoveries againſt Tenant by the Courteſy, Tenant for Life, Tenant in Dower, and Tenant in Tail after Poſſibility, of any Lands whereof they are ſeiſed, ſhall be void againſt thoſe then in Reverſion. 10 *Rep.* 45. *a.*

All Recoveries againſt Tenant for Life, *&c.* ſhall be void.

D **The** Statute of 14 *Eliz. cap.* 8. doth not extend to preſerve any Reverſion or Remainder expectant upon an Eſtate-Tail, where Tenant for Life is impleaded, and he vouches Tenant in Tail. 10 *Rep.* 45. *a.*

But where Tenant for Life vouches Tenant in Tail, they are good. 14 **Eliz.** *cap.* 8.

E **The** three inſeperable Incidents to an Eſtate-Tail:

The three Incidents to Recoveries, which cannot be reſtrained by Condition or Limitation.

F First, **Dower.**
Secondly, **Tenant** by Courteſy after Iſſue.
Thirdly, **To** bar the Intail by a Recovery or Fine to bar Iſſues.

G **But** Tenant in Tail may be reſtrained from diſcontinuing in Fee or in Tail, or *pur Auter Vie.* 10 *Rep.* 38, 39.

May be reſtrained from diſcontinuing.

H **The** Recompence in Value is the Reaſon of the Bar by a Common Recovery againſt the Iſſue in Tail: But not as to him in Remainder or Reverſion.

The Recompence in Value goes to the Iſſue in Tail, not him in Remainder or Reverſion.

I **A Recovery** binds not an executory Deviſe; becauſe the Ground of this is the Recompence which extends not to theſe Eſtates. *Lutw.* 1224, 1225.

Where a Recovery binds not an executory Deviſe.

K **Nor** where Tenant in Tail grants a Rent, and afterwards ſuffers a Recovery; the Rent which was *in eſſe* ſhall not be barr'd by this Recovery, no more ſhall a Rent annex'd to a Reverſion, though the Reverſion be gone. *Cro. El.* 792, 793. *pl.* 36.

A Recovery ſhall not bar a Rent granted by Tenant in Tail; nor a Rent annex'd to a Reverſion.

L **A Recovery** bars only where there is a Privity in Law, as he in Remainder or Reverſion. *Carter* 53. It ſhall not bar the Heir who doth not claim by Diſcent, but as a Purchaſor only. *Mich.* 9 *W. inter Lloyd & Carew.*

Bars only where there is a Privity in Law.

Not an Heir who claims by Purchaſe.

A good Tenant to the *Præcipe* ſhall be intended, until the contrary appears.

In every Common Recovery there ſhall be intended to be a good Tenant to the *Præcipe*, until the contrary be ſhewn on the other Part. *Lutw.* 1549. A

One vouch'd who had no Title, and good.

Tenant in Tail makes a Tenant to the *Præcipe*, who vouches a Stranger, who vouches the Tenant in Tail, who vouches the common Vouchee; this is a good Recovery, and ſhall bar the Eſtate-Tail, and all Remainders over. *Page & Hayward, Paſch. 7 Annæ.* B

How to plead a Writ of Entry brought.

It is not neceſſary always to alledge how the Tenant in a Common Recovery became a Tenant; but to ſay, That a Writ of Entry was brought againſt *A.B.* then Tenant of the Freehold. *Lutw.* 1549. But the uſual Way is to plead how he became Tenant. C

Tenant in Tail, Remainder for Years, ſuffers a Recovery, it bars the Remainder.

It was a Doubt by 9 *Eliz.* That if there was a Tenant in Tail, Remainder for Years, and Tenant in Tail ſuffers a Recovery, whether the Leaſe for Years be barr'd or no? Becauſe it was ſaid, That no Recompence can go to this, being a Chattel. But by *Hale* Chief Juſtice: The conſtant Experience hath been, that this Leaſe ſhall be barr'd. 2 *Lev.* 30, 31. 1 *Mod.* 110. D

What Eſtates-Tail are preſerved by the Statute of 34 H. 8. cap. 20.

No Eſtate-Tail in Poſſeſſion is preſerved by the Statute of 34 *H.* 8. *cap.* 20. only Eſtates-Tail created by Letters Patent, or where the Eſtate-Tail is of the King's Proviſion, and not where it is of the Gift or Creation of a common Perſon without the King's Proviſion. 2 *Rep.* 15. *a.b.* 52. *a.* There the Iſſue and Remainder ſhall be barr'd. *Moor*, Caſe 344. for it binds all Perſons until it comes to the Crown. *Moor*, Caſe 466. *fol.* 349, 449. E

The Recovery ſhall not hurt the Heir in Tail.

34 & 35 H. 8. c. 20. Sect. 2.

That after the Death of ſuch Tenant in Tail againſt whom ſuch Recovery ſhall be had, the Heir in Tail may enter and enjoy the Lands ſo recovered according to the Form of the Gift of Intail, *Non obſtante* the Recovery. *Sect.* 2. F

Where a common Recovery bars all Eſtates-Tail, Remainders, and Leaſes granted by a Remainder-Man.

Recoverors ſubject to the Uſes, although not Parties to the Deed.

A Common Recovery againſt Tenant in Tail binds not only his Iſſue and the Remainder, and all Leaſes, Charges, &c. granted by him in Remainder, but alſo the Reverſion, and all Leaſes and Charges granted by him in Reverſion. 1 *Rep.* 62. *b.* 63. *a.* 52. *b.* Although Recoverors were Strangers to the Indenture, yet their Eſtate was ſubject to the Uſes of it. 2 *Rep.* 77. *a.* G

Where a Leaſe ſhall not be defeated by a Recovery.

A Leaſe for Years made by him who after ſuffers a Recovery, is good, and ſhall not be defeated by the Recovery; but otherwiſe where the Recovery is by a good Title. 2 *Leon.* Caſe 89. *fol.* 65. H

A **It** is a Rule, That every Stranger to a Recovery may falſify if he came not in pending the Writ againſt him againſt whom the Recovery was; for he cannot have Error or Attaint. *Cro. El.* 284. *pl.* 1.

Where a Stranger may falſify.

B **A Common Recovery** was reverſed for Infancy. *Cro. El.* 323.

A Recovery reverſed for Infancy.

C **A Guardian** was allowed by Order of the Court to an Infant, that a Recovery might be ſuffered againſt him as Vouchee, and he was brought into Court, being but four Years old, and vouch'd; and his Guardian appeared and vouch'd the common Vouchee. *Cro. El.* 471. *pl.* 24. *Hob.* 197. *Cro. El.* 172. *Cro. Car.* 307.

An Infant vouch'd appeared by his Guardian and ſuffered a Recovery.

D **If** Tenant in Tail grants a Rent-Charge, and ſuffers a Recovery, the Rent-Charge ſhall not be avoided; though it doth a Reverſion: Becauſe the Eſtate of him that ſuffers the Recovery is charg'd with the Rent. 1 *Mod.* 109. 1 *Cro.* 598. See Title **Rent,** and *Cro. El.* 292, 293.

A Rent granted by Tenant in Tail, ſhall not be avoided by a Recovery.

E **If** there be a Limitation of Uſes upon Condition, and the *Ceſtuy que Uſe* ſuffers a Recovery, that will not deſtroy the Condition, the Eſtate being charged with it: For the Recoveror can only have the Eſtate, as he that ſuffered the Recovery had it. 1 *Mod.* 109.

Neither ſhall a Condition.

F **He** in Remainder in Tail grants a Rent-Charge, a Recovery ſuffered by Tenant in Tail ſhall bar it; becauſe the Recoveror comes in, in the Continuance of that Eſtate which is not ſubject to the Rent, but is above all thoſe Charges. 1 *Mod.* 109. See *Capel*'s Caſe, 1 *Rep.*

But a Rent granted by the Remainder-Man ſhall.

G **Where** a Recovery is ſuffered, and the Uſes are declared by a Deed bearing Date before the Recovery, there no other Uſes can be declared: But if the Uſes are declared by a Deed bearing Date afterwards, there a Stranger ſhall be admitted to plead other Uſes before the Deed, but an Heir at Law ſhall not: But when nothing appears to the contrary, it ſhall be a good Declaration. 9 *Rep.* 10. *a.* 15. *a.* *Hill.* 8 *W.* *B. R.* See the Statute of 4 & 5 *Annæ.*

Uſes declared before the Recovery, no other Uſes can be declared.

4 & 5 **Ann.**

H **Where** the Uſes of a Fine are declared by a Deed before the levying, there no other Uſes can be declared by Parol. *Ram & Thacker*, upon a Writ of Error out of *Ireland*. *Tempore Car.* 2.

So alſo in a Fine.

I **In** pleading of a Recovery, or a Fine, you need not ſet forth the Deeds which lead the Uſes, but to ſay, That the Recovery or the Fine (as the Caſe is) was levied to ſuch Uſes; and in Evidence you ſhall produce your Deeds to prove your Uſes. *Hill.* 8 *W.* *B. R.*

How to plead a Recovery, or a Fine to Uſes.

K **How** to plead a Common Recovery. *Lutw.* 1549. 2 *Lev.* 31. To Uſes. *Lutw.* 1550. 2 *Mod.* 70.

How to plead a Common Recovery.

The Huſband may declare the Uſes of the Wife's Fine, if ſhe doth not diſſent; but the Wife cannot do it.

A **The** Huſband ſolely may declare the Uſes of the Wife's Land, if her Diſſent be not proved: But the Wife cannot do it without her Huſband's Conſent.

What Limitation for Writs of Error to reverſe Recoveries. 10 & 11 **W**. 3. **cap**. 14.

B **No** Writ of Error ſhall be brought to reverſe a Common Recovery after twenty Years, *per Stat.* 10 & 11 *W.* 3. *cap.* 14. See Title **Error**.

It ſhall bar a Poſſibility, but not a Condition.

C **A Recovery** ſhall not bar a Condition, but it ſhall bar a Poſſibility; and if Recoveries ſhould not be admitted to bar Poſſibilities, they would endure for ever, and Perpetuities be thereby introduced: But ſee 2 *Rep.* 52. *b.* where it ſhall bar a Condition.

Where a Fine or Recovery ſhall extinguiſh a Condition, and where not.

D **Where** a Fine or Recovery ſhall extinguiſh a Condition. 2 *Rep.* from 73. to the End. And where they ſhall not. *Ibid.* 73. *a.*

No Averment can be againſt precedent Indentures.

But upon Indentures ſubſequent there may.

E **When** precedent Indentures are made, and afterwards a Recovery is had, no Averment can be taken by Parol, that the Recovery was to other Uſes than thoſe in the Indenture; for nothing veſts till the Recovery is had. But upon an Indenture ſubſequent, an Averment may be taken, that other Uſes than in the Indenture were declared, were expreſs'd and limited, before and after the Time of the Recovery. 9 *Rep.* 10. *b.* 11. *a.*

Now all Declarations ſhall be good by Deed made, or to be made; and this is by the Statute of 4 & 5 **Ann.**

F **Now** by the Statute of 4 & 5 *Annæ*, reciting that it hath been doubted, whether after the Statute of *Frauds and Perjuries*, Declarations of Uſes, Truſts or Confidences (*Note*, That Statute mentions only Truſts or Confidences) of Fines or Recoveries, manifeſted by Deed made after ſuch Fines or Recoveries, are good in Law; it is declared, That all ſuch Declarations of Uſes, Truſts or Confidences of any Fines or Recoveries, by any Deed already made, or to be made, by the Party who is by Law enabled to declare ſuch Uſe or Truſt, after the levying or ſuffering of ſuch Fine or Recovery, ſhall be as good and effectual in Law, as if the ſaid Statute of *Frauds and Perjuries* had not been made.

Where a Recovery deſtroys a Power.

G **Tenant** in Tail, with Power to make a Jointure, ſuffers a Recovery, this deſtroys the Power. 2 *Lev.* 61.

A Recovery in a Lord's Court, is no Bar without a Cuſtom.

H **A Common Recovery** ſuffered in a Lord's Court is no Bar, unleſs there is a Cuſtom for ſo doing. 1 *Lev.* 136.

It may be of a Rent or Advowſon.

I **A Common Recovery** may be of a Rent. *Lutw.* 1224, 1225. Or of an Advowſon. 5 *Rep.* 40. *a. b.* 41. *a.*

A **The** Widow, Tenant for Life, Remainder to her Son *T.* in Tail, Remainder to *W.* in Fee. A *Præcipe* is brought againſt the Feme Tenant for Life, who vouches *T.* This Recovery ſhall bar *W.* in Remainder, notwithſtanding the Statute of 14 *Eliz. cap.* 8. 2 *Rep.* 60, 61. *Cro. Eliz.* 562. *pl.* 12.

Tenant for Life, Remainder in Tail, Remainder in Fee: A *Præcipe* is brought againſt Tenant for Life, who vouches the Remainder in Tail, this is a Bar.

14 **Eliz.** cap. 8.

B **No** Eſtate-Tail is preſerved by the Statute of 34 *H.* 8. *cap.* 20. but may be barr'd by Recovery, except only Eſtates-Tail created by Letters Patent; or where the Eſtate-Tail is of the King's Proviſion; not where it is of the Gift or Creation of a common Perſon without the King's Proviſion. 2 *Rep.* 15. *a. b.*

What Eſtates-Tail are preſerv'd by being barr'd by

34 **H.** 8. cap. 20.

C **A Recovery** will bar a Contingent Remainder, but not an executory Deviſe. See *Pell & Brown in Cro. Jac.* and *Gardner & Sheldon in Vaughan.*

Will not bar an executory Deviſe, but it will a contingent Remainder.

D **A Recovery** bars not where there is not a Privity in Law; it ſhall bind only the Iſſue of Tenant in Tail, and alſo thoſe in Reverſion or Remainder; not where there is an executory Eſtate. *Carter* 53. But it ſhall bar all Proviſo's, Conditions, *&c.* depending upon an Eſtate-Tail. *Plunket & Holmes,* 12 *Car.* 2. *B. R.* and *Goodyear & Clarke,* about the ſame Time.

What it bars, and what not.

Bars Proviſo's, Conditions, *&c.*

E **What** Recoveries ſuffered by Infants are good. See Title **Infant,** and **Error.**

Of Recoveries by Infants.

F **Where** it bars an Eſtate-Tail. 3 *Salk.* 296.

Bar.

G **See** ſeveral Precedents of Recoveries ſuffered by Infants, but diſallowed. *Salk.* 567.

Infant.

H **A Recovery** to *A. & Ux'* for Life, Remainders to the Heirs Males of *A.* on the Wife begotten, *A.* can't dock this Remainder during his Wife's Life. *Ibid.* 568.

Remainder.

I **In** a Recovery the Tenant to the *Præcipe* was made by a Fine, which was after reverſed, yet good. *Ibid.*

Tenant to the *Præcipe.*

K **And** if the Tenant gains the Freehold at any Time before Judgment, 'tis good. *Ibid. Comberb.* 425.

The like.

L **Alſo** Non-Tenure is cured by a ſubſequent Purchaſe. *Salk.* 569.

Non-Tenure.

M **A Recovery** ſuffer'd to *A.* and the Heirs of her Body by one of the Name of *Searle,* is an Eſtate-Tail. *Ibid.* 570.

Eſtate-Tail.

N **A Condition** that runs with the Land can't be barr'd by Recovery, *aliter* of a Condition collateral. *Ibid.*

Condition.

O **Tenant** in Tail, and he in Remainder may be vouched jointly. *Salk.* 571.

Joint Vouchees.

Voucher. If the Tenant vouches a Stranger, who vouches Tenant in Tail, and he enters into Warranty, 'tis good. *Ibid.* A

Privity. And Tenant in Tail coming in as Vouchee comes in in Privity of all Eſtates he ever had. *Ibid.* B

Rectory.

See **Quare Impedit.**

A Rectory, what. A Rectory is a Thing which conſiſts of divers Things, as Glebe, Tithes, &c. 2 Leon. Caſe 13. and for which an Ejectment will lie. See Title Ejectment. C

Reddidit ſe.

See
- **Bail.**
- **Ca. ſa.**
- **Proceſs and Proceedings.**
- **Scire facias.**

Reddidit ſe, what. Reddidit ſe is in Caſe where a Man procures Bail for himſelf to an Action in any Court of Law, if the Party bailed, at any Time before the Return of the ſecond Sci. Fa. againſt his Bail, renders himſelf in Diſcharge of his Bail, they are thereby diſcharged. D

When the Bail are diſcharged upon the Defendant's rendering himſelf into Cuſtoſty. If the Defendant render himſelf to Cuſtody in Diſcharge of his Bail upon the Day of the Return of the ſecond *Sci. fa.* againſt the Bail *ſedente Cur.* or if an Action be brought upon the Recognizance, if he render himſelf upon the Day of the Return of the Proceſs againſt the Bail *ſedente Cur.* the Bail are diſcharged. *Paſch.* 21 *Car.* 2. *Per Magiſtrum Liveſay & al'.* E

A **If** a Defendant renders himſelf in Diſcharge of his Bail after Judgment, yet if the Plaintiff commits him not in Execution in two Terms following, he ſhall be diſcharged upon Common Bail, as if he were committed for want of Bail upon an Action: The Manner whereof, ſee in Title Priſoner. *Paſch.* 21 *Car.* 2. Or he may move the Court to be diſcharged, unleſs the Plaintiff will charge him in Execution.

The Defendant is not in Execution upon a *Reddidit ſe*, until the Plaintiff hath prayed it.

When he may be diſcharged by Default of the Plaintiff.

B **Where** any Defendant renders himſelf to the Marſhal, upon any Action in this Court, and in Diſcharge of his Bail, the Defendant's Attorney ſhall forthwith give Notice of ſuch Render to the Plaintiff's Attorney, and ſhall make Oath thereof before the Bail-piece be filed.

What the Defendant's Attorney muſt do upon the Defendant's rendering of himſelf in Diſcharge of his Bail.

C **Alſo** it is ordered, That if any Perſon who is Bail for any Defendant, ſhall be impleaded by Action upon the Recognizance, ſuch Perſon may render the Defendant into Cuſtody in Diſcharge of his Bail, by the Space of eight whole Days in full Term next after the Return of the *Latitat*, or other Proceſs ſued forth againſt ſuch Bail, upon Notice thereof to the Plaintiff or his Attorney in the ſaid Suit; and all other Proceſs againſt the Bail in ſuch Suit upon the Recognizance ſhall ceaſe.

What Time the Bail hath to render the Principal.

D **A** *Ca. ſa.* was returned *non eſt inventus* againſt the Principal, and one *Sci. fa.* and *Nichil*; and upon the ſecond *Sci. fa.* he renders himſelf, and was received: But if there had been a *Sci. feci*, and Judgment thereupon, he had come too late. *Cro. Jac.* 109. *pl.* 5.

When a Perſon may render himſelf in Diſcharge of his Bail, and when not.

E **A Man** was Bail upon a Writ of Error, and upon a *Sci. fa.* againſt him he pleads that the Principal render'd himſelf to the *Malſhalſea*, to be chargeable with the Execution, and to diſcharge his Bail: But adjudged to be no Plea; for the Recognizance is not to render his Body, but to pay the Debt adjudged, and is grounded upon 3 *Jac.* 1. *cap.* 8.

Bail upon a Writ of Error cannot render the Principal in Diſcharge of themſelves, and why. 3 Jac. 1. cap. 8.

F **A** *Reddidit ſe* will not diſcharge the Bail, unleſs the Attorney who is concerned for the Defendant or his Bail, enters the *Reddidit ſe* in the Marſhal's Book, and gives Notice thereof to the Plaintiff's Attorney, and brings the Bail-piece to the Secondary, who, upon producing of a Note from the Marſhal or his Clerk, that the Defendant is in Cuſtody, will diſcharge it: But till this is done, the Plaintiff may notwithſtanding proceed to Judgment and Execution againſt the Bail; for until the Bail-piece is diſcharged, there is a Record ſtill remaining in Court againſt the Bail: And ſo it was adjudg'd in this Court in one *Streater*'s Caſe, 15 *Car.* 2.

How and by what Means the Bail are to be diſcharged upon a *Reddidit ſe.*

Rediſſeſin, See Aſſize.

Reference.

Reference, what.

A **REference in the Acceptation of Law is where a Matter of Fact is referred by the Court of Chancery to a Maſter; and by the Courts at Law to a Prothonotary or Secondary, to examine and report to the Court.**

In Debt, if the Defendant before he pleads offers Principal and Intereſt, the Matter ſhall be referred to the Secondary.

B **It** was ſaid, *Hill.* 1658. to be the uſual Practice of this Court, ſince the new Regulation of the Chancery, in an Action of Debt upon an Obligation, if the Defendant do, before he pleads, offer to pay the Principal, Intereſt and Charges to the Plaintiff, to refer the whole Matter to the Secondary to ſtate the Buſineſs betwixt them, and to ſtay the Proceedings in Law in the mean time; but before the Rule can be drawn up, the Money muſt be brought into Court. *Vide ante* **Payment.**

Matters of Fact not to be referred to the Secondary.

C **Matters** of Fact in Difference betwixt Party and Party in a Cauſe depending in this Court, are not to be referred to the Secondary; for ſuch Matters are triable by the Jury who is to try the Cauſe; but Matters concerning the due Proceedings, or undue Proceedings in the Cauſe, by either of the Parties, are properly to be referred unto him, and for him in ſome ordinary Caſes to compoſe the Differences betwixt them, and in others to make his Report to the Court, how the Matters do ſtand (*Paſch.* 1650. *B. S.*) That they may ſettle the Differences according to Rules and Orders of the Court.

When one of the Parties may proceed in the Reference alone, if the other do not attend.

D **If** a Matter in Difference betwixt the Plaintiff and Defendant be referred to the Secondary, and one of the Parties will not attend at the Time appointed by the Secondary for that Purpoſe after Notice thereof given, to hear the Buſineſs referred; the other Party may proceed in the Reference alone, and get the Secondary to make his Report without hearing of the other Party. (*Trin.* 1651. *B. S.*) For one Party cannot compel the other to attend; and therefore ſuch References would many Times take no Effect for want of the Preſence of both Parties, if a Report may not be made notwithſtanding one of them refuſeth to attend; and if he be prejudiced by not being heard before the Secondary, it is his own Fault that he would not attend as the Rule directed.

Regiſter.

A ANNO 7 *Annæ*, there was an Act made, entituled, *An Act for the publick regiſtering of Deeds, Conveyances, Wills, and other Incumbrances which ſhall be made of, or that may any ways affect any Honours, Manors, Lands, Tenements and Hereditaments within the County of* Middleſex, *after the 29th Day of* September, 1709. See the Act.

The Title of the Act for Regiſtring of Conveyances, Wills, and other Incumbrances for Lands in the County of *Middleſex*. 7 **Annæ.**

B **The** Fees for regiſtring of Wills, and granting of Probates by the Statute of 21 *H.* 8. *cap.* 5. See Title **Probate.**

Fees for regiſtring and Probates of Wills. 21 **H.** 8. **cap.** 5.

C **What** is a good Regiſtring of a South Sea Contract within the Stat. of 7 *Geo.* 1. *Seſſ.* 2. *cap.* 1. *Mod. Caſes in Law and Equity* 173.

Rejoinder.

See { **Juſtification. Pleas and Pleadings. Replication.**

D **A Rejoinder is where the Defendant makes Anſwer to the Plaintiff's Replication; and it ought to be a ſufficient Anſwer to the Replication; and alſo to follow and enforce the Matter of the Bar.**

A Rejoinder, what.

F **When** a Replication is pleaded, which is iſſuable, the Clerk of the Papers, when he makes up the Paper-Book, doth of Courſe make up the Rejoinder, and joins the Iſſue in it; ſo likewiſe if the Rejoinder be iſſuable, he makes up the Surrejoinder to it, and joins the Iſſue in it.

When the Clerk of the Papers makes up the Rejoinder.

If

Rejoinder is not good if it depart from the Plea in Bar.

A **If** the Defendant do in his Rejoinder depart from his Plea pleaded in Bar, this Rejoinder is not good. (*Mich.* 22 *Car. B. R.*) For this is to ſay and unſay, which the Law doth not allow; for Pleas muſt be plain and certain, and by the doing thereof the Cauſe depending is hindred from coming to a certain Iſſue.

One may not rejoin on Words that are not in the Declaration or Replication.

B **One** ought not to rejoin upon ſuch Words which are not contained in the Declaration or Replication. (*Mich.* 22 *Car. B. R.*) For that is for the Party to frame a Diſcourſe of his own, and not to anſwer the Plaintiff's Matter alledged, and ſo is to no Purpoſe. See after **Replication.**

Where the Iſſue may be upon the Rejoinder or Replication.

C **Where** the Iſſue may be upon the Rejoinder or Replication. *Lutw.* 1641.

Relations.

Relations, what.

D **Relations are but Fictions, which ſhall not prejudice the King by foreign Conſtructions.** Cro. Car. 423.

Of Judgments.

E **Where** a Judgment ſhall relate to the Day of Filing the Original and bind the Lands, and not only from the Time of the Judgment given. *Carth.* 245.

Of Words.

F **Where** a ſubſequent Word ſhall relate to a Thing preceding. *Ibid.* 261.

Of Acts.

G **Where** a ſubſequent Act ſhall relate to one precedent. 3 *Salk.* 182.

Of Judgments.

H **Where** it ſhall be *ad proximum antecedens*. *Ibid.* 199.

I **Judgment** muſt relate to the Eſſoin-Day, that being the firſt Day of the Term. 3 *Salk.* 212, 345. *Vide Cro. Car.* 102. The Difference between the Relation of Judgments in the Common Pleas and the King's Bench.

Releaſe.

See { Executors. Suſpenſion.

A **A Releaſe is the giving or diſcharging of the Right or Action which any Man hath or claimeth againſt another, or his Land, and is always by Deed.**

A Releaſe, what.

B **Where-ever** a Releaſe of Lands is made, it is abſolutely neceſſary that he to whom the Releaſe is made, be in Poſſeſſion of ſome Eſtate at the Time of the Releaſe. *Litt. Sect.* 447.

Releaſee muſt be in Poſſeſſion at the Time of the Releaſe made.

C **If** there be two Jointenants, and the one for Money grants, bargains, ſells, and confirms to the other; reſolved this amounts to a Releaſe. *Raym.* 187, 413, *&c.* See 2 *Saund.* 96.

One Jointenant ſells to the other; it is a Releaſe.

D **It** cannot be conſtrued to be the Intent of the Party to releaſe an Agreement made to himſelf when he joins another in the ſame Releaſe, who was not Party to the ſaid Agreement. *Id.* 393.

It ſhall not be conſtrued that the Party deſigned to releaſe an Agreement made to himſelf, if another be join'd with him in the Releaſe.

E **That** a Releaſe is an abſolute Defeaſance. 2 *Saund.* 48.

A Releaſe is a Defeaſance.

F **If** the Defendant in an *Ejectione firmæ* will not defend the Title of the Land in Queſtion, in Caſe the Verdict paſs againſt the Plaintiff, the Ejector may releaſe the Coſts to the Plaintiff. (*Hill.* 1649. *B. S.* 11 *Feb.*) For he is the Defendant in Law, although the Title do not concern him; and it is the other's Fault that he was not himſelf made Ejector to defend the Title, by which Means he might have had the Coſts.

Where the Ejector may releaſe Coſts to the Plaintiff.

G **One** is not bound to give a Releaſe unto the Sheriff for Monies which he receives from him, which he levied for him by virtue of an Execution; but he muſt give him a Note under his Hand that he hath received it. (*Hill.* 1650. *B. S.*) By *Rolle* Chief Juſtice, *Quære tamen*, Whether he be bound to give him ſuch a Note more

No Releaſe need be given to the Sheriff for Money levied by Execution.

more than a Releaſe? For the Sheriff is an Officer of the Law, and upon Payment of the Money the Law gives him his Diſcharge.

What Words are requiſite in a Conveyance by Leaſe and Releaſe.

Where an Eſtate is conveyed by Leaſe and Releaſe, there in the Leaſe for a Year there muſt be the Words *Bargain and Sell* for Money; but if it be not ſo, but only the Words *Demiſe*, *Grant*, *and to Farm let*, in that Caſe the Leſſee cannot accept of a Releaſe of the Inheritance until he hath actually entred, and is in Poſſeſſion; for till his Entry he hath but *Intereſſe termini:* But in the other Caſe of the Words *Bargain and Sell*, the Bargainee for a Year is immediately in Poſſeſſion upon the executing of the Deed. A

Where a Releaſe is made the Eſtate muſt be turned to a Right.

Alſo it is neceſſary that in all Caſes where a Releaſe is made, the Eſtate be always turned to a Right; as in Caſe of a Diſſeiſin, *&c.* where there are two Rights, 1. A Right of Poſſeſſion in the Diſſeiſor. 2. A Right to the Eſtate in the Diſſeiſee. Now when the Diſſeiſee hath releaſed the Diſſeiſor, here the Diſſeiſor hath both the Rights in him, *viz.* The Right to the Eſtate, and alſo to the Poſſeſſion; or elſe that there be Privity of Eſtate between the Tenant in Poſſeſſion and the Releaſor, for a Releaſe will not operate without Privity. B

The ſeveral Ways that Releaſes operate.

Releaſes work ſeveral Ways: Some by Way of Enlargement of Eſtates, ſome by way of *Mitter l'Eſtate*, ſome by way of *Mitter l'Droit*, and ſome by way of Extinguiſhment. *Co. Litt.* 273. *b.* C

A Right or Title to a Freehold *in Præſenti* or *Futuro* may be releaſed in five Manners.

A Right or Title to a Freehold or Inheritance, be it *in Preſenti* or *Futuro*, may be releaſed in five Manners. 10 *Rep.* 48. *a. b.* D

1*ſt*, **To** the Tenant of the Freehold in Fact or in Law, without any Privity. E

2*dly*, **To** him in Remainder.

3*dly*, **To** him ſeiſed of the Reverſion, without any Privity.

4*thly*, **To** him who hath a Right in reſpect of the Privity; as if a Tenant be diſſeiſed, the Lord may releaſe his Services.

5*thly*, **In** Reſpect of Privity only, without Right: As if Tenant in Tail makes a Feoffment in Fee, the Donee after the Feoffment hath no Right: But yet in reſpect of the Privity only, he may releaſe to him the Rents and Services, ſaving the Fealty: But no Eſtate can paſs to him by the Releaſe, who hath no Eſtate in Privity. 10 *Rep.* 48. *b.*

A Releaſe to a Tenant at Sufferance is void.

A Releaſe to Tenant at Sufferance is void. 3 *Leon. Caſe* 204. *Note,* There is no Privity between the Owner of the Eſtate and the Tenant at Sufferance. F

A Releaſe of a future Intereſt in a Chattel to the Deviſee in Poſſeſſion ſhall extinguiſh it.

A Releaſe of a future Intereſt in a Chattel, being made to the Deviſee in Poſſeſſion by a Deviſee of a Term, to one and the Heirs of her Body after the G the Death of the Deviſee in Poſſeſſion, ſhall extinguiſh the future Intereſt. 10 *Rep.* 48 to 52.

A **A Releaſe** to a Purchaſor of the Land by the Conuſee of a Satute before Execution is no Bar. 10 *Rep.* 50, 51. For the Conuſee at the Time of the Releaſe had no Right or Cauſe of Demand in the Land, for the Land is not the Debtor, but the Perſon; and till Execution ſued, he had no Right or Demand in the Land. *Cro. Eliz.* 552.

A Releaſe before Execution is no Bar, and why.

B **A Man** promiſed a Widow that if ſhe would marry *J. S.* he would pay her 40 *s.* yearly after the Death of *J. S.* ſhe married *J. S.* who died, and brought her Action for this 40 *s. per Ann.* the Defendant pleads the Releaſe of *J. S.* It is no Plea; for it is no Demand during his Life, nor could be ever demanded by him. *Cro. Jac.* 222. *pl.* 2.

A Man cannot releaſe a Thing which he hath no Demand to.

C **Leſſee** for Years in Poſſeſſion releaſes to the Leſſor all Demands; and the Leſſor releaſeth to the Leſſee all Demands; this is not a Surrender of the Leaſe, neither is the Leſſee's Eſtate enlarged by the Leſſor's Eſtate: For the Word *Demand* doth not enure to give away or extinguiſh that which a Man hath in his Poſſeſſion, but ſuch Things only which he hath not in his Poſſeſſion, as Choſes in Action, Rents, and ſuch like. *Dal.* 85. *pl.* 45.

Leſſor releaſes to the Leſſee all Demands. *Quid operatur* by it.

D **A Man** covenants to do a collateral Act; before a Breach of this Covenant a Releaſe of all Actions, Suits and Quarrels ſignifies nothing; for before Breach there is not any Duty or Cauſe of Action; for the Breach ought to precede: But had the Releaſe been of all Covenants, there before a Breach, it would have barred. 1 *Rep.* 112. *b.* 5 *Rep.* 71. *a.*

A Releaſe of all Actions doth not releaſe a Covenant to do a collateral Act, but a Releaſe of all Covenants had been a Bar.

E **Where** a Power of Revocation is preſent, and not after a Death, *&c.* it may be extinguiſhed by a Releaſe made by him who hath ſuch Power, to any one who hath the Freehold in the Land in Poſſeſſion, Reverſion or Remainder. 1 *Rep.* 113. *a.*

F **Upon** a Bond for Performance of Covenants, the Obligee before any Breach releaſes all Covenants, and afterwards a Covenant is broken, the Obligation is not forfeited, but is diſcharged. 3 *Leon. Caſe* 105.

A Releaſe of all Covenants before any broken, diſcharges the Bond.

G **Debt** for the Arrears of an Annuity; the Defendant pleads a Releaſe of all Actions before the Day of Payment; after Oyer and Demurrer, held to be no Plea; becauſe a Releaſe cannot diſcharge a Duty not then in Being. *Cro. Eliz.* 897. *pl.* 20. *Co. Litt.* 292. *b.*

A Releaſe cannot diſcharge a Duty not then in Being.
Nor a future Duty.

H **In** Covenant the Defendant pleads a Releaſe of all Actions, Duties and Demands, dated three Days after the Deed dated; and held to be no Bar; for being a Covenant future, and not in Demand at

A Releaſe of all Demands is no bar to a Covenant not broken, but a Releaſe of all Covenants is a bar.

the

the Time of the Releaſe made, but to be performed after, this Releaſe is no Bar; but a Releaſe of all Covenants would have been a Bar. *Cro. Jac.* 170.

Covenant by an Aſſignee; the Defendant pleads a Releaſe of the Covenantee after the Commencement of the Suit.

Where ſuch a Releaſe ſhall be a Bar, and where not.

Covenant brought by an Aſſignee; the Defendant pleads a Releaſe from the Covenantee dated after the Commencement of the Suit, and held to be an ill Plea: For 1*ſt*, The Covenant goes with the Land, and the Aſſignee ſhall have the Benefit of it. 2*dly*, Though the Breach was in the Aſſignee's Time, yet if the Releaſe had been by the Covenantee (under whom the Plaintiff claims) before any Breach or Suit commenc'd, it would have barr'd the Aſſignee from bringing his Action; but the Breach being in the Aſſignee's Time, and the Action brought by him, and ſo attach'd in his Perſon, the Covenantee cannot releaſe this Action, wherein the Aſſignee is intereſted. *Cro. Car.* 503. *pl.* 4. A

In what Caſes a Releaſe of all Actions real and perſonal, is a good Bar.

A Releaſe of all Actions, real and perſonal, is a good Bar in Waſte, or *Quare Impedit. Litt. Sect.* 492, 493. But a Releaſe of all Actions generally is better than to ſay, all Actions Real and Perſonal. *Ibid. Sect.* 500. B

A Man is bound to pay 20 *l.* at *Michaelmas*, a Releaſe of all Actions before *Michaelmas* is a Bar, and why.

Where a Man is bound to pay 20*l.* at *Michaelmas*, a Releaſe of all Actions before *Michaelmas* is a perpetual Bar; and yet the Plaintiff could not have his Action until after *Michaelmas*: For it is *Debitum in præſenti*, although *ſolvendum in futuro. Litt. Sect.* 512. C

How to plead a Releaſe *Puis darrein Continuance.*

How to plead a Releaſe *Puis darrein Continuance.* D
See Title **Pleas Puis darrein Continuance.**

A Releaſe of one Plaintiff in Errors ſhall not bar the other Defendant.

Two Defendants in Ejectment bring Error, and after *In nullo eſt erratum*, one of the Plaintiffs in Error releaſes all Errors; and void as to the other, but ſhall bar the Releaſor. *Cro. Jac.* 117. E

Where a Releaſe to the Principal is a Releaſe to the Bail upon a Writ of Error.

After Judgment, and a Writ of Error brought, and Bail put in upon it, a Releaſe of all Debts, Judgments and Executions to the Principal diſcharges the Bail; for the Bail is not to pay the Money in the Principal's Default of Payment; and it is a good Releaſe to the Bail, for they are bound in a Sum certain; and it is not like *Hoe*'s Caſe in *Coke*, where they are not bound in a Sum certain. *Cro. Jac.* 401. *pl.* 10. F

How pending the Writ and before Iſſue.

How to plead a Releaſe pending the Writ, and before Iſſue. *Lutw.* 1177 to 1179. G

In Replevin againſt five, a Releaſe to two pleaded.

In Replevin againſt five, a Releaſe to two of them pleaded. *Idem.* 1175. H

A **A Future** Act cannot be releaſed by a Releaſe of all Demands, *viz.* a Promiſe or Covenant not broken: But a Releaſe of all Promiſes ſhall releaſe a Promiſe not broken. *Lutw.* 249, 250. So of Covenants; ſee in this Caſe much good Matter.

Where a future Act may be releas'd, and where not.

B **A Duty** certain may be releaſed before the Day of the Performance of the Condition: But a Duty uncertain at firſt, upon a Condition precedent to be made certain afterwards, is in the mean Time but a meer Poſſibility which cannot be releas'd. 5 *Rep.* 70, 71. *a.* 10 *Rep.* 11. *a.* *Cro. Eliz.* 580, 581.

A Duty certain may be releas'd, not a Duty uncertain.

C **A Releaſe** where there is not any Intereſt to be releaſed, is void. 3 *Leon. Caſe* 340.

A Releaſe where no Intereſt is to be releas'd, is void.

D **An** Acknowledgment under Hand and Seal, that he is ſatisfied of all Bonds entred into by the Defendant to him, or that the Defendant is diſcharged of all Bonds entred into by him; this in Judgment of Law is a Releaſe and a Diſcharge of Bonds. 9 *Rep.* 52. *b.*

An Acknowledgment of Satisfaction, or of a Diſcharge of all Bonds, is a good Releaſe in Law.

E **General** Words reſtrained by the particular Occaſion thereof. 3 *Lev.* 275. *Show. Rep.* 151. See Title **Executors.**

How general Words reſtrained.

F **A general** Releaſe relating to a particular Perſon, ſhall not bar by the general Words, but only for that Purpoſe. 2 *Lev.* 214, 215, 216.

To what Purpoſe a Releaſe ſhall bar.

G **A Bond** entred into to *A.* to the Uſe of *B.* *B.* cannot releaſe this Bond. 1 *Lev.* 235.

Bond entred into to *A.* to the Uſe of *B.* *B.* cannot releaſe it.

H **Obligee** in Truſt for another releaſes to the Obligor all Demands upon his own Account; this doth not releaſe the Obligation. 1 *Lev.* 272.

A Releaſe of the Obligee in Truſt ſhall not bar.

I **A Releaſe** before any Rent due, of all Demands that the Plaintiff had or ſhould have againſt the Defendant, this doth not releaſe the accruing Rent. *Co. Litt.* 291. 1 *Lev.* 99. 2 *Lev.* 210.

A Releaſe of all Demands ſhall not releaſe the accruing Rent.

K **An** Award was made the 24th of *March*, that the Defendant ſhould pay the Plaintiff at *Michaelmas* 20 *l.* for Non-payment whereof the Action was brought; the Defendant pleads a Releaſe of all Demands 10 *Apr.* and the Court held that this was not any Bar. *Cro. Jac.* 300. *pl.* 4.

An Award to pay 20 *l.* at *Michaelmas*, the Defendant pleads a Releaſe after the Award; this is not any Bar.

L **In** Conſideration that the Plaintiff had lent him 10 *l.* and had aſſigned over a Bond to him, and had promiſed to releaſe him from all Demands, he promiſed that if the Money was not received upon the Bond, he would at *Michaelmas* pay 20 *l.* the Plaintiff avers all done on his Part, and that the 20 *l.* was not paid; the Defendant pleads the Releaſe, and held to be no Plea; for the Releaſe is Part of the Conſideration,

So where the Releaſe is Part of the Conſideration, it cannot be pleaded.

Alſo it doth not releaſe what is future.

and the Cauſe which gives the Action, and without making of it, he could not maintain his Action: Alſo it doth not releaſe what is future. *Cro. Jac.* 623. *pl.* 15.

Trover againſt two; one pleaded Not-guilty, and the other a Releaſe, the Jury found the firſt guilty, and alſo the Releaſe.

A Releaſe to one is a Releaſe to all.

A **Trover** againſt two; one pleads a Releaſe, and the other Not-guilty; the Jury find him guilty who pleaded Not-guilty, and alſo found the Releaſe for the Party who pleaded it: The Judgment was thereupon ſtayed; becauſe a Releaſe to one joint Treſpaſſer is a Releaſe to all the reſt: Though they may ſever in pleading, yet one Jury ſhall aſſeſs Damages for all. *Hob.* 66. For the Plaintiff having joined and made him Defendant with one to whom he had releaſed; the Releaſe ſhall enure to diſcharge him who pleaded Not-guilty. 6 *W.* & *M.*

In an Aſſize by two, the Releaſe of one ſhall not bar the other.

B **In** an Aſſize by two, the Releaſe of one of the Plaintiffs is no Bar for the Land, nor for the Damages, becauſe they enſue the Reality. *Cro. Eliz.* 649.

Where a Releaſe of one ſhall not prejudice the others.

C **See** much good Matter where the Releaſe of one ſhall not bar the others joined with him. *Cro. Eliz.* 648. *pl.* 4.

A Releaſe by an Infant without Conſideration, is void.

D **Two** Executors; one an Infant who releaſes without any Conſideration; it is void. *Cro. El.* 671. *pl.* 27.

Leſſee for Years.

E **Leſſee** for Years releaſes to him in Reverſion, it is good by Surrender: But if Tenant for Life releaſes to him in the Reverſion, it is by way of Releaſe, and not of Surrender. 1 *Lev.* 47. See *Dal.* 32. *pl.* 17.

Leſſor grants his Reverſion, and afterwards releaſes the Covenants to the Leſſee before Breach, it is void.

F **Leſſor** grants his Reverſion, and afterwards releaſes the Covenants to the Leſſee before Breach; it is void. 2 *Lev.* 206.

A Releaſe cannot be for a Time, or upon a Condition, but it ſhall be for ever.

But it may be delivered as an Eſcrow.

G **A Man** cannot releaſe upon Condition, nor for a Time, but the Condition is void, and the Time is void; but it ſhall enure to whom it is made for ever, becauſe it operates by Way of Extinguiſhment: But a Releaſe may be delivered as an Eſcrow, to be his Deed when ſuch a Thing is performed. *Keilw.* 88. *a.*

Covenant not to ſue, where it is a Releaſe, and where not.

H **A Covenant** not to ſue is an abſolute Releaſe: But a Covenant not to ſue within a particular Time, is no Releaſe; and if a Suit be brought within the Time, the Remedy muſt be by Action of Covenant. *Show. Rep.* 46, 47. *Cro. Eliz.* 352. *pl.* 7.

Jointenants may releaſe to each other.

I **Jointenants** may releaſe and confirm to each other. *Vaughan* 145.

A **After** Lands are extended upon an *Elegit*, and conveyed over to ſeveral Perſons, the Plaintiff in the Judgment releaſes all Judgments and Executions; an *Audita Querela* well lies. *Cro. Car.* 214. *pl.* 4. See **Audita Querela.**

A Releaſe of all Judgments and Executions by the Plaintiff after an Extent upon an *Elegit* diſcharges it, and an *Audita Querela* well lies.

B **A Bond** was dated 1 *Maii* 10 *Car.* the Defendant pleads a Releaſe 1 *Junii* following; the Plaintiff craves Oyer of the Releaſe, which is of all Actions before 1 *Apr.* before the Date of the Releaſe; this is no Releaſe of all Actions to the Day of the Date of the Releaſe. *Cro. Car.* 426. *pl.* 18.

A Releaſe dated after the Bond, but to releaſe all Actions before the Bond.

C **Where** a Releaſe of Errors was pleaded upon a Writ of Error brought, the Judgment ſhall be *Nul capiat per breve.* 3 *Salk.* 214.

Releaſe of Errors.

D **A Releaſe,** how to be pleaded. *Ibid.* 274.

How to plead it.

E **A Covenant** never to take Advantage of a Deed, amounts to a Releaſe. *Ibid.* 298.

What amounts to a Releaſe.

F **Releaſe** of all Right to ſuch Lands will not releaſe a Judgment not executed. *Ibid.*

What will not releaſe a Judgment.

G **A Releaſe** to one Obligor is a Releaſe to both. *Ibid.*

Of a Bond.

H **A Defeazance** muſt contain proper Words of Defeazance, *&c. Salk.* 575.

Defeazance.

I **Covenant** not to ſue for a certain Time is not a Releaſe or Defeazance. *Ibid.* 573.

Covenant not to ſue.

K **Bond** from *A.* and *B.* to *C.* joint and ſeveral; a Covenant from *C.* not to ſue *A.* is not a Defeazance. *Ibid.* 575.

What not a Defeazance.

L **One** Deed is not to be conſtrued as a Defeazance of another without Neceſſity. *Ibid.*

M **A Releaſe** of all Demands to the Perſonal Eſtate of the Inteſtate releaſes not a Bond before Judgment and Execution. *Ibid.*

N **Where** one releaſes his Right he can't purſue his Action or Remedy. *Ibid.* 422.

Releaſe of Right.

O **But** if he has a Right and ſeveral Remedies, this Diſcharge of one Remedy does not the other. *Ibid.*

Proviſo.

P **Where** a Proviſo goes by Way of Defeazance of a Covenant, it muſt be pleaded on the other Side. *Ibid.* 574.

Q **But** otherwiſe where it goes by Way of Explanation or Reſtriction of the Covenant. *Ibid.*

R **A growing** Rent is not releaſed by a Releaſe of all Demands. *Ibid.* 578.

A growing Rent.

S **One** bound to releaſe on Payment of Money, is bound to releaſe on Tender and Refuſal.

Relief.

See **Heriot.**

A Relief, what.

A Relief is not a Service, but is the Fruit of the Services; and it is as a Bloſſom fallen off from the Tree, and therefore the Defendant need not to avow upon any Perſon certain. Penant's Caſe, 3 *Rep.* 66. a. Cro. Eliz. 885. pl. 26. A

A Relief is twofold.

A Relief is twofold; that is to ſay, 1. A Relief at the Common Law; and, 2. A Relief grounded upon a Cuſtom. B

To whom, and by whom due.

A Relief is due to the Lord from his Tenant in Fee only. *Keilw.* 82. C

How recoverable.

What Reliefs are, and how recoverable, ſee much good Matter. *Latch.* 37. 129. D

Debt lies by an Executor againſt an Executor of an Heir who was to pay a Relief by 32 **H.** 8. *cap.* 37.

Debt lies by an Executor againſt an Executor of an Heir, who was to pay a Relief. *Cro. Eliz.* 883. *pl.* 17. E

Acceptance of the Rent of a new Tenant ſhall not diſcharge a Relief due from a former Tenant.

Acceptance of the Rent of a new Tenant is no Bar of a Relief due from a former Tenant; becauſe now by 21 *H.* 8. *cap.* 37. he may avow upon the Land, and is not forc'd to avow upon the Perſon. *Moor, Caſe* 887. F

An Avowry for a Relief, how it is.
A Flower of the Tenure.

An Avowry for a Relief is good, without ſhewing particularly how due: Becauſe it is a Parcel of the Tenure *de communi jure*, and a Flower of the Tenure; and if ſeparated, muſt be ſhewn on the other Side. 3 *Lev.* 145. G

How a Relief ſhall be recovered.

A Relief is no Service, but an Incident to it, for which they may diſtrein, but cannot have an Action of Debt: But his Executors or Adminiſtrators may bring an Action of Debt for it, but cannot diſtrein. *Co. Litt.* 83. *a.* H

How much the Relief is.

The Lord of whom Soccage Land is held by Fealty, and a certain Rent upon the Death of his Tenant, ſhall have of the Heir ſo much as the Year's Rent amounts unto for a Relief, beſides the Year's Rent which the Heir muſt alſo pay. *Co. Litt.* 91. *a.* I

Remainder.

See {Recovery. Reverſion.

A remainder, what.

A **A Remainder of Land is the Land that ſhall remain after the particular Eſtate determined; as where one grants Lands for Years or Life, the Remainder to** J. S. viz. **When the Years are expired, or the Life is dead, that then the Land ſhall remain and come to** J. S. **and his Heirs. But** Note, **There muſt be Livery made upon the Leaſe for Years, or elſe the Remainder will not paſs.**

The three Things appointed by Law to every Remainder.

B **The** Law hath appointed three Things to every Remainder:

C Firſt, **An** Eſtate precedent, made at the ſame Time that the Remainder commences.

Secondly, **That** the particular Eſtate continues when the Remainder veſts.

Thirdly, **That** the Remainder be out of the Donor at the Time of the Livery. 1 *Plow.* 25. *a.*

Three Things to be had by a Remainder.

D **Three** Things one ſhall have by a Remainder, by a Conveyance at the Common Law:

E Firſt, **A Remainder** veſted.

Secondly, **Poſſeſſion** in Law.

Thirdly, **Poſſeſſion** in Fact. *Ibid.* 29. *a.*

How to be limited, and when to commence.

When created.

F **A Remainder** is an Eſtate limited in a Deed, (*Note*, Without a Deed or Will in Writing it cannot be created) to commence after the Determination of a particular Eſtate, whereon it muſt neceſſarily depend, and muſt be created at the ſame Time with the particular Eſtate, 3 *Rep.* 21 *Rep. a. b. Vaugh.* 269. The very Word Remainder imports as much, it muſt be a Remainder of ſomething which is in Being.

Where a Remainder to one not *in eſſe*, is void.

Every Livery ought to operate preſently.

A *A.* **leaſes** to *B.* for Years, Remainder to his right Heirs, and makes Livery; the Remainder is void, becauſe there is not any Perſon *in eſſe* who can preſently take by the Livery; and every Livery ought to have its Operation preſently. 4 *Leon.* Caſe 77.

There may be a Remainder without an Eſtate to ſupport it.

B **But** in ſome Caſes there may be a Remainder without a particular Eſtate *in eſſe* to ſupport it; as it is in the Caſe of a Uſe in Remainder. (*Hill.* 22 *Car. B. R.*) But this is not by the Common Law, but by the Statute of Uſes.

Remainder to the right Heirs of *J. S.*

C **A Remainder** limited by a general Name may be good, although the Perſon be not *in eſſe*; as a Leaſe for Life, Remainder to the right Heirs of *J. S.* who is living. This Remainder may be good, and yet he had no right Heirs at the Limitation of the Remainder: But where a Remainder is limited by particular Name of Baptiſm and Surname, it is not good if the Perſon is not *in eſſe*. 2 *Rep.* 51. *b.*

A Remainder veſted in a Daughter cannot be diveſted by an after-born Son.

D **To** the Uſe of himſelf for Life, Remainder to his eldeſt Child; he hath Iſſue a Daughter, and afterwards a Son; as ſoon as the Daughter is born, the Remainder is veſted in her, and ſhall not be diveſted by the Birth of the Son. 2 *Leon. fol.* 219. Caſe 275.

Tenant in Tail can grant only an Eſtate for Life, not a Remainder over.

E **Tenant** in Tail can grant only for his own Life, and cannot limit a Remainder over; for an Eſtate for his own Life is as long as he can grant. 2 *Rep.* 52.

Where a Claim of a Remainder upon a Condition to be.

F **A Claim** of a Remainder by Force of a Condition muſt be upon the Land. 2 *Rep.* 53. *b.*

The right Heirs of *J. S.* includes all the Heirs of their Heirs.

G **A Remainder** limited to the right Heirs of *J. S.* includes all the Heirs of their Heirs, without ſaying right Heirs and their Heirs. 2 *Lev.* 232.

How to take by Way of Remainder.

H **A Man** may take by Way of Remainder, altho' there is not one Word in the Deed; and as a Remainder a Man may take, though not Party to the Deed. *Cro. El.* 10. *pl.* 4.

Where Perſons cannot take by a Deed, unleſs there be a Remainder-Man.

I **The** indenting or not indenting of a Deed is not material; and the common Learning is, that one who is not Party to a Deed made between Parties, cannot take by the Deed, unleſs by Remainder. 3 *Lev.* 139, 140.

It muſt be created with the particular Eſtate, and be limited for a certain Eſtate.

K **A Remainder** muſt be created with the particular Eſtate, and muſt be limited for a certain Eſtate, *viz.* for Life, Years, or in Fee; ſo that where a Leaſe to *J. S.* for Ninety-nine Years, if he lived ſo long, and if he died within the Term, then his Wife ſhall have it *pro toto reſiduo termini*, *J. S.* dies within the Term, his Wife ſhall not have it, for the Term was determined, and the Limitation to her void. *Cro. El.* 216. *pl.* 15. 217. 10. *pl.* 4.

A *A.* **ſeiſed** in Fee, leaſes to *B.* for Life, Remainder to *C.* for Life, Provided that if *A.* had a Son, who ſhould live to five Years of Age, then the Eſtate to *C.* ſhould ceaſe, and ſhould remain to his Son in Tail; he hath ſuch a Son, and whether he ſhould have the Eſtate or no, was the Queſtion: And held that he ſhould not.

A Proviſo to determine the Remainder of a Leaſe for Life upon the Birth of a Son, is void.

B **A Remainder** ought to paſs at firſt by the Livery, and ſhall not take Effect with a Condition precedent, nor begin upon ſuch a Condition, but is void.

A Remainder ought to paſs upon the Livery, and not to begin upon a Condition.

C **Alſo** an Entry is requiſite to avoid a Remainder for Life; for a Freehold cannot determine without an Entry.

An Entry is requiſite to avoid a Remainder for Life.

D *Beamond* Juſtice ſaid, That he could never find that a Proviſo could create a Remainder, though it might determine it. *Cro. Eliz.* 360. *pl.* 20. 361.

A Proviſo cannot create a Remainder, but may determine it.

E *A.* **levies** a Fine to the Uſe of himſelf for his Life, and after his Deceaſe to *B.* till *C.* his Son returned from beyond Sea, and came to Age or died, which ſhould firſt happen; he returned from beyond Sea: And held, that the Remainder was good; for though his coming to Age or from beyond Sea is uncertain, yet his Death is certain. *Cro. El.* 269. *pl.* 11.

A Remainder to his Son when he came of Age, from beyond Sea, or died, is good, and why.

F **A Leaſe** for Years is made, Remainder in Fee, Tenant for Years enters before Livery; his Term is good, but the Remainder is void. But if the Leaſe be to commence at *Michaelmas*, Remainder in Fee, although the Leſſor makes Livery to the Leſſee, yet the Livery and Remainder are void, becauſe there was no preſent Eſtate to which the Livery could be annexed. *Throgmorton* and *Tracy*. 1 *Plow.* 156. *a. b.*

Leſſee for Years, Remainder in Fee, enters before Livery, the Remainder is void.

G **He** in Remainder of an Eſtate veſted, may grant or deviſe the ſame; and a Leaſe made by him in Remainder during the Life of Tenant for Life, is a good Leaſe.

Remainder of an Eſtate veſted may be deviſed or granted.

H **Where** there is Tenant for Life, Remainder in Tail, and he in Remainder leaſeth for Years, to commence after the Death of Tenant for Life, and the Tenant for Life afterwards ſuffers a Recovery, and vouches the Tenant in Tail; the Leaſe for Years here is not barred, becauſe it was the Recovery of the Tenant for Life, and he in Remainder only Vouchee; but if the Tenant in Tail in Remainder had ſuffered it, that would have deſtroyed the Remainder, and all the Eſtates derived from thence. *Cro. El.* 718.

Tenant for Life, Remainder in Tail; he in Remainder lets for Years, then Tenant for Life ſuffers a Recovery; the Leaſe for Years is not barred.

Eſtate limited to a Man for Life, Remainder to his firſt Son in Tail, and for Default of ſuch Iſſue to Truſtees for an hundred Years to raiſe Portions: The firſt Son may ſuffer a Recovery, and bar the Term for Years.

A **Where** an Eſtate is limited to a Man for Life, Remainder to his firſt Son in Tail, and for Default of ſuch Iſſue, then to Truſtees for an hundred Years to raiſe Portions, *&c.* Here the firſt Son may, when he comes of Age, ſuffer a Recovery, and by this Recovery the Remainder for an hundred Years to the Truſtees ſhall be barred; but where the Leaſe for an hundred Years is made by another Deed precedent to the Eſtate-Tail, there a Recovery will not touch it. *Inter Goodyear* and *Clarke*, *tempore Car.* 2. *B. R.*

Upon what a contingent Remainder depends.

B **A contingent** Remainder does not depend upon a Reverſion which comes after, but upon the particular Eſtate which precedes it. So where the particular Eſtate continues either *in eſſe*, or in right of Entry; it is ſufficient enough to ſupport the contingent Remainder. 2 *Saund.* 382.

Where the particular Eſtate is drown'd, the contingent Remainder is gone.

C **In** all Caſes where the particular Eſtate is drowned in the Reverſion, the contingent Remainder which depended upon it is gone, although there is no diveſting of any Eſtate. *Id.* 386.

Where a limited Remainder is void, and where not.

D **Where** a Remainder limited after a particular Eſtate, which is void in the Creation, is alſo void, and where not. 1 *Saund.* 150, 151.

What ſhall be an Eſtate-Tail executed, not contingent.

E **If** Lands be given to a Woman during Widowhood, and after to the Heirs of her Body; this is an Eſtate-Tail executed, and not contingent. *Raym.* 127.

What ſhall not be a contingent Remainder.

F **That** a Remainder for Years depending on an Eſtate for Years, cannot be a contingent Remainder, *&c.* *Id.* 150, 151.

Releaſe by one Jointenant to another ſhall not deſtroy a contingent Remainder.

G **That** a Releaſe by one Jointenant for Life to another, doth not deſtroy a contingent Remainder depending upon it. *Id.* 413.

To a Baſtard *in eſſe* is good, not to a Baſtard before born.

H **A Limitation** of a Remainder to a Baſtard *in eſſe* is good, but not to a Baſtard before born. *Cro. El.* 509. *pl.* 34. 510.

But it may be done by a Fine levied to ſuch Uſe.

I **But** a Man levies a Fine to the Uſe of himſelf and his Wife for their Lives, Remainder to the Uſe of the eldeſt Child of his own Body in Tail; this is a good Name of Purchaſe by way of Remainder, it not being *in eſſe*, and the Remainder ſhall be in Abeiance till the Birth of the Child. *Moor*, Caſe 246. See in Title **Purchaſe.**

Muſt not be Party to the Deed.

K **But** *Note*, He that takes an Eſtate by way of Remainder, muſt not be Party to the Deed.

How a contingent Remainder may be deſtroyed.

L **A contingent** Remainder may be deſtroyed by levying of a Fine, ſuffering of a Recovery, or by otherwiſe deſtroying of the particular Eſtate upon which the contingent Eſtate depends, before the Contingency happens. For take away the Foundation that ſupports the Building, and the Building muſt of Neceſſity fall down: And ſo it is in this Caſe.

Where a Remainder ſhall never commence.

A **Where** a Remainder is to commence upon an Alienation, it ſhall never ariſe, becauſe the particular Eſtate is deſtroyed by the Alienation before the Remainder can commence. *Moor*, Caſe 1067.

For Ninety-nine Years if he lived ſo long, Remainder to his firſt, ſecond, third, *&c.* Sons: This is a void Remainder, for want of a Freehold to ſupport it.

B **A Man** conveys to the Uſe of himſelf for Ninety-nine Years, if he lived ſo long, the Remainder to his firſt, ſecond, third, *&c.* Sons: This is a void Remainder, for want of a Freehold to ſupport it; for there muſt be a Freehold to ſupport every contingent Remainder. *Hill.* 4 *Ann. B. R. Adams verſus Tertenentes Savage.*

There ought to be a Freehold to preſerve a Remainder until one ſhall take as a Purchaſor, or by the Name of a right Heir.

C **A Feoffment** to the Uſe of himſelf for forty Years, Remainder to his Son in Tail Male, Remainder to his own right Heirs; the Son dies without Iſſue Male, having Iſſue two Daughters, the Father then living, and dies; they ſhall not take, becauſe there was no right Heir to take as a Purchaſor when the Eſtate-Tail determined by the Death of the Son without Iſſue Male: For the Remainder to the right Heirs cannot be preſerved by the mean Eſtate for Years; for it ought to be a Freehold at leaſt, which ought to preſerve ſuch a Remainder, until there be one to take it by Name of a Purchaſor or right Heir. *Poph.* 3, 4. And no Difference between a Remainder in Poſſeſſion to the right Heir, and a Remainder in Uſe.

No Difference between a Remainder in Poſſeſſion and a Remainder in Uſe.

A Term cannot depend upon ſo remote a Poſſibility, as a dying without Iſſue.

D **Deviſe** of a Term to one for Life, and if he dies without Iſſue, to another in like Manner: This Deviſe is void to the Remainder-Man, for a Term cannot depend upon ſo remote a Poſſibility, as a dying without Iſſue. 1 *Lev.* 290. 29.

A Deviſe of a Term of a thouſand Years to *A.* for Life, Remainder to his Son in Tail.

The Term is in the Father.

E **Deviſe** of a Term of a thouſand Years to *J. S.* and if he dies, to *B.* his Son, and the Heirs of his Body; the whole Term is in *J. S.* the Father; the Remainder to the Son is but a Poſſibility. 3 *Lev.* 264, 265. See 10 *Rep.* 87. *a.*

A Contingency, what.

F **Where** it is uncertain, whether the Uſe, or the Eſtate limited *in Futuro*, ſhall ever veſt in Eſtate or Intereſt, or not; there the Uſe or Eſtate is ſaid to be in Contingency; becauſe ſuch future Contingent may either veſt or not veſt, as the Contingency happens. 10 *Rep.* 85.

Where a Remainder is meerly contingent.

G **Where** a Remainder is limited to commence upon an Act to be done, and not upon Determination of the Eſtate, it is meerly contingent. *Litt. Rep.* 222.

Where an Eſtate in Remainder ſhall veſt in Contingency or Abeiance.

H **An** Eſtate in Remainder ſhall never veſt in Contingency or Abeiance, but by expreſs Words. *Ibid.* 219.

When a contingent Remainder muſt veſt.

Every contingent Remainder muſt veſt *eo inſtanti* that the particular Eſtate determines; for if the particular Eſtate be ended, either in Deed or in Law, before the Contingency happens, the Remainder is void, except in the Caſe laſt above, which is by a particular Statute. A

Where a contingent Remainder, and where an executory Deviſe.

Where a Contingency is by Will limited to depend upon an Eſtate of Freehold capable of ſupporting it; there it ſhall never be conſtrued to be an executory Deviſe, but a contingent Remainder. 2 *Saund.* 388. B

Where the particular Eſtate is gone, the Remainder is gone alſo.

When a particular Eſtate is deſtroyed, the Remainder depending upon it is deſtroyed alſo. 1 *Rep.* 66. *b.* C

A Remainder cannot depend on an abſolue Fee, nor a Fee-ſimple conditional.

A Remainder cannot depend upon an abſolute Fee, nor a Fee-ſimple determinable. 1 *Plow.* 29. *b.* Becauſe the whole Eſtate is in the Feoffee or Grantee: But if a Man deviſes Lands to *A.* and his Heirs, ſo long as *B.* hath Heirs of his Body, the Remainder over to *C.* This is a good Deviſe, not as a Remainder, but as an executory Deviſe. *Vaugh.* 270. 367. D

But it may be by Way of executory Deviſe.

Remainder upon Condition.

A Remainder upon Condition was held good. 1 *Plow.* 32. *b.* 33. *a. b.* 34. *b.* E

Where a limited Remainder ſhall be good by way of Remainder, and where of a preſent Eſtate.

Where a Remainder limited to one for the Term of the Life of the Tenant for Life, ſhall be good by way of Remainder, and where by the way of a preſent Eſtate. 1 *Saund.* 151, 152. F

Where the Iſſue of Tenant in Tail ſhall be barred.

If Tenant in Tail, where the Reverſion is in the Crown, be diſſeiſed, and the Diſſeiſee levy a Fine, and five Years paſs, his Iſſue ſhall be bound. *Raym.* 273. G

A Fine ſhall bar the Iſſue of a Purchaſor of an Eſtate-Tail from the Crown.

And if a Man purchaſe an Eſtate-Tail from the Crown, a Fine will bar his Iſſues, notwithſtanding the Statute of 38 *H.* 8. *Id.* 274. H

None can diſcontinue an Eſtate-Tail, unleſs he diſcontinue the Reverſion.

None can diſcontinue an Eſtate-Tail, unleſs he diſcontinue the Reverſion; and therefore if Tenant in Tail enfeoffs the Donor, it is no Diſcontinuance of the Intail. *Id.* 344. I

No Fine can dock an Eſtate-Tail, if the Reſion be in the Crown.

That an Eſtate Tail cannot be dockt, neither by Fine nor Recovery, when the Lands are of the Gift of the King, and the Reverſion is in the Crown. *Id.* 359. K

Otherwiſe if it be granted out of the Crown.

But if ſuch Reverſion be granted out of the Crown, it may be deſtroyed by Fine and Recovery. *Id.* 288, 358. L

Where Remainder to King in Fee is void.

A Tenant for Life, Remainder in Tail to *B.* Remainder in Tail to *C. C.* bargains and ſells, *&c.* for the Life of *B.* Remainder to the King in Fee; this Remainder is void. 1 *Lutw.* 849. M

A **Tenant** in Tail (of the Gift of a Subject) Remainder in Tail to the King, the Tenant in Tail ſuffers a common Recovery; this ſhall bar the Eſtate-Tail, but not the Remainder in the King. 1 *Lutw.* 848, 849.

Where the Remainder to the King ſhall not be barred.

B **So** if the Remainder in Fee had been limited to the firſt Tenant in Tail, a Recovery will bar the Eſtate-Tail, and the Remainder in Fee; yet the Eſtate of the King is not thereby touched. *Ibid.*

Another Inſtance of the ſame.

C **Upon** a Settlement before Marriage to the Husband and Wife, and the Heirs of their two Bodies, they take by Moieties. 3 *Lev.* 107.

To Baron and Feme, and the Heirs of their two Bodies, they take by Moieties.

D **Caſe** lies for him in Remainder againſt a Copyholder for Life committing Waſte. 3 *Lev.* 130.

Caſe lies for him in Remainder, againſt a Copyholder for Life committing Waſte.

E **Remainder** of a Rent *de novo* deviſed, and good. 1 *Lev.* 44. *Salk.* 557.

Deviſe of Remainder of a Rent *de novo.*

F **Where** Goods themſelves are deviſed, there can be no Remainder over; but there may be where only the Uſe or Occupation of them is deviſed. *March* 106. *pl.* 183.

There can be no Remainder of Goods.

G **It** is by the Stat. of 10 & 11 *W. cap.* 16. enacted, That where any Eſtate is already, or ſhall hereafter by any Marriage, or other Settlements, be limited in Remainder for or to the Uſe of the firſt, or other Son or Sons of the Body of any Perſons lawfully begotten, with any Remainder or Remainders over, to or to the Uſe of any other Perſon or Perſons, or in Remainder to or to the Uſe of any Daughter or Daughters lawfully begotten, with any Remainder or Remainders to any other Perſon or Perſons lawfully begotten, or to be begotten, that ſhall be born after the Deceaſe of his, her, or their Father, ſhall and may, by Virtue of ſuch Settlement, take ſuch Eſtate ſo limited to the firſt, and other Sons, or to the Daughter or Daughters, in the ſame Manner as if born in the Life of his, her or their Father, although there ſhall happen no Eſtate to be limited to Truſtees after the Deceaſe of the Father, to preſerve ſuch contingent Remainders to ſuch after-born Son or Sons, Daughter or Daughters, until he or ſhe ſhall come *in eſſe*, or are born to take the ſame.

The Statute for preſerving of the Eſtates of poſthumous Children, although there are no Truſtees, to preſerve the contingent Remainder. 10 & 11 **W. cap. 16.**

H **The** Act of 32 *H.* 8. *cap.* 31. provides only for the Preſervation of a Reverſion, or Remainder expectant upon an Eſtate for Life, and not upon an Eſtate-Tail. 10 *Rep.* 44. *b.*

32 **H. 8. cap.** 31. Provides only for Reverſions or Remainders upon Eſtates for Life.

I **No** Act hath been made to preſerve a Reverſion or Remainder expectant upon an Eſtate-Tail. *Ibid. a.*

No Act preſerves Reverſions or Remainders on Eſtates-Tail.

K **No** Leaſe, nor Rent, nor Grant of Common, nor Recognizance, nor any other Charges, Intereſt or Eſtate, made by Tenant in Tail in Remainder, ſhall charge the Poſſeſſion of the Reverſioner.

No Leaſe or other Thing made by Tenant in Tail in Remainder, ſhall charge the Poſſeſſion of the Reverſioner.

Bargain and Sale off from the Land, how to enure.

Bargain and Sale made off from the Land is not ſufficient to make a Claim, and then to paſs a Remainder. 2 *Rep.* 54. *a.* A

When Remainder to veſt.

Every Remainder is to veſt during the particular Eſtate, or *eo Inſtanti* it determines. *Salk.* 228. C

Right of Entry.

And a Right of Entry muſt be preſently upon the happening of a Contingent Remainder. *Ibid.* 577. D

A Right of Entry will ſupport a Contingent Remainder, but a Right of Action not. *Ibid.* 576. E

What can bar a contingent Remainder.

Surrender of Tenant for Life being *non compos* to a Remainder-Man is void, and can't bar a Contingent Remainder. *Ibid.* F

Tenant for Life attainted of Treaſon.

A. Tenant for Life, Remainder to his Wife for Life, Remainder to his firſt and ſecond Sons in Tail, Remainder to *A*'s right Heirs; *A.* commits Treaſon, and then has a Son and is attainted, the Contingent Remainder to him is not diſcharged by veſting in the Crown during his Life, becauſe the Wife's Eſtate is ſufficient to ſupport it. *Ibid.* G

Contingent Remainders.

Contingent Remainders are not favoured in Law nor raiſed, but upon a Neceſſity, when a Perſon is not *in eſſe*. *Skin. Rep.* 208. H

Where not an Eſtate to ſupport it.

If a Leaſe be made to *A.* for Life, Remainder to the right Heirs of *B.* this is a good Remainder, if *B.* dies before *A.* becauſe a particular Eſtate to ſupport it; but if *A.* dies in the Life of *B.* the Remainder is void, becauſe there is no Perſon to take it, and no particular Eſtate to ſupport it. *Skin.* 352. I

The like.

J. S. having two Sons, deviſed his Lands to his eldeſt Son for fifty Years, if he ſhall ſo long live, and after the Determination of this Eſtate to the Heirs Males of his Body; and for Default of ſuch Iſſue to the ſecond Son for Life; and after his Deceaſe to his firſt Son in Tail, and ſo further; the eldeſt Son ſuffers a Recovery, and dies: Adjudged upon a Special Verdict that this Recovery had not barr'd the ſecond Son, for the eldeſt had not any frank Tenement, but was only Tenant for Years, with a Contingent Remainder, which was void, not having a particular Eſtate to ſupport it. *Ibid.* 408. K

What continued a contingent Remainder.

A. Tenant for Life of *B.* Remainder to the right Heirs of *B.* and after *A.* grants his Eſtate to *B.* ſo that he had the particular Eſtate of the Frank Tenement for his Life, Remainder to his right Heirs; yet the Remainder continued a Contingent Remainder. *Ibid.* L

Where a Reverſion paſſes.

Where a Reverſion in Fee paſſes by a Deviſe of the remaining Part of any Eſtate. *Comberb.* 93, 94. M

Contingent Remainder.

How a Contingent Remainder differs from an Executory Deviſe. *Ibid.* 252. N

An Eſtate for Years cannot ſupport a Contingent Remainder. *Ibid.* 254, 312. O

A **An** Uſe limited to the Huſband for Life, Remainder to the Wife for Life, Remainder to all Iſſues Female of their Bodies, and to the Heirs Male of the Bodies of ſuch Iſſues Female; they have Iſſue a Daughter, the Remainder is attach'd in her, but may be diveſted by the Birth of another Daughter afterwards, *i. e.* for a Moiety. *Comberb.* 467.

Of attaching, veſting and diveſting a Remainder.

B **So** a Limitation to the Uſes of ſeveral in Remainder, is good to the laſt, tho' veſted in the former before the laſt had a Capacity to take it. *Ibid.*

The like.

C **Deviſe** to *R. D.* for Life, and after his Deceaſe to the Heirs Male of the Body of *R. D.* now living, who had then a Son; adjudged that he had a preſent Remainder in Tail veſted in him as a Purchaſor, and that the Words *now living* are a ſufficient Deſcription of his Perſon. *Carthew* 155.

D **Remainder** in Tail raiſed by a Covenant to ſtand ſeiſed. *Carthew* 40.

How raiſed.

E **Where** a Remainder limited to the Heirs of his Body is a Contingent Remainder, and veſted in him by Purchaſe, and not by Diſcent, and ſo not barr'd by a Fine. *Ibid.* 273.

Where by Purchaſe or Diſcent.

F **Remainder** where 'tis Contingent and not veſted. *Ibid.* 274.

Contingent.

G **Where** 'tis Contingent and not an Executory Deviſe. *Ibid.* 310. 3 *Salk.* 128.

Executory Deviſe.

H **Of** Croſs Remainders. *Mod. Caſes in Law and Equity* 254.

Croſs Remainders.

I **Where** Deviſees ſhall take an Eſtate for Life with Contingent Remainders, *&c.* *Ibid.* 253.

Deviſees for Life.

K **An** Executory Deviſe to two on the Contingency of a third Perſon's dying in the Life of thoſe two (without Iſſue.) *Ibid.* 346.

Executory Deviſe.

L **See** and Note the Reſolution of the Court in Contingent Remainders on a Deviſe. *Ibid.* 382, 383, *&c.*

Contingent Remainders.

M **A Contingent** Remainder cannot depend upon an Eſtate for Years, or in Fee, but it may upon an Eſtate for Life, or in Tail. 3 *Salk.* 299.

Contingent Remainder.

N **Where** there is no Eſtate to ſupport it. *Ibid.*

O **By** what Acts the Contingency may be deſtroyed. 3 *Salk.* 300.

P **Where** a Contingent Remainder is limited, no Eſtate afterwards limited can veſt. *Ibid.*

Rent.

See
Acceptance.
Acquittance.
Aſſignment.
Avowry.
Debet & Detinet.
Debt.
Deviſe.
Executor.
Heir.
Leaſe, Leſſor and Leſſee.
Reſervation.

The ſeveral Sorts of Rents, and what they are.

THERE are three Sorts of Rents, *viz.* Rent-Service, Rent-Charge, and Rent-Seck. Rent-Service is where a Tenant in Fee holds his Land of his Lord by Fealty, Rent, and other Services; and if the Rent be behind he may diſtrein, but cannot bring Debt. A

Rent-Charge is where a Man makes a Feoffment, or other Conveyance in Fee, reſerving a Rent; and there is a Clauſe in the Deed, That if the Rent be behind, he may diſtrein for it. B

Rent-Seck is where a Rent is granted, but there is no Clauſe of Diſtreſs in the Deed, and for this he cannot diſtrein; but if he hath had Seiſin, an Aſſiſe will lie: But if there hath been no Seiſin, he is without Remedy. Non-payment of a Rent-Seck upon Demand is a Denial in Law, whereof a Grantee may have an Aſſize, provided that he hath had Seiſin of the Rent before. Cro. Eliz. 505. Co. Litt. Sect. 233. C

To whom the Rent muſt be reſerved.

It is a Maxim in Law, That the Rent muſt be reſerved to him from whom the Land moveth, and not to a Stranger. *Co. Litt.* 143. *b.* D

Not to a Remainder-Man, but it may to a Reverſioner.

A Rent cannot be reſerved to a Remainder-Man, but to a Reverſioner it may. *Cro. Eliz.* 792. *pl.* 36. E

Payment in Parliament Taxes, is a good Plea in Debt for Rent.

In Debt for Rent the Defendant pleads Payment in Parliament-Taxes, and held a good Plea: Becauſe warranted by the Statute which gives the Taxes. F

3 In

A **In** Debt for Rent, where the Plaintiff covenanted to repair the Houſe, and did not, the Defendant expended part of the Rent in Repairs, Whether this ought to be pleaded, or might be given in Evidence, was the Queſtion. *Cro. Eliz.* 222. *pl.* 2.

Payment in Money laid out in Repairs, and good.

B **Tho'** a Leaſe be avoided by Non-payment of Rent, yet Debt lies afterwards for what Rent was due before the Leaſe became void. *Cro. El.* 78.

Debt for Rent lies after a Leaſe is avoided.

C **No** Chattels which ſhall be upon any Houſes, Lands, *&c.* leaſed for Life or Lives, Years, at Will, or otherwiſe, ſhall be taken in Execution, unleſs the Plaintiff in the Action ſhall before the Removal of ſuch Goods by Virtue of ſuch Execution or Extent, pay to the Landlord or his Bailiff, ſo much as ſhall be due for Rent at the taking of ſuch Goods in Execution, provided the Arrears do not amount to more than one Year's Rent; and in Caſe they are more, then the Plaintiff paying the Landlord or his Bailiff one Year's Rent, may proceed to execute his Execution, as he might have done before the making of this Act; and the Sheriff is to levy and pay the Plaintiff as well the Money paid for Rent, as the Execution-Money.

No Execution ſhall be executed upon Goods upon Land liable to pay Rent until the Rent not exceeding one Year, be paid by the Plaintiff.

How to proceed when the Landlord is paid.

What the Sheriff is to do.

D **A Man** deviſes 20 *l.* *per Ann.* out of a Rectory with a Clauſe of Diſtreſs; the Glebe belonging to the Rectory was but 40 *s.* *per Ann.* and the reſt was only for Tithes not liable to a Diſtreſs: But decreed that the whole Rectory was liable to pay the 20 *l.* *per Ann.* *Chan. Rep.* 79, 80.

A Deviſe of 20 *l.* *per Ann.* out of a Rectory, when the Glebe was but 40 *s.* *per Ann.*

The whole Rectory ſhall be liable to pay it.

E **In** Debt for Rent, the Plaintiff demands more in his Declaration than is due; he may remit Part, and have Judgment for the Reſidue.

Debt for Rent, Plaintiff demands more than is due, he may remit Part.

F **Paying** ſo much Rent, or ſo many Turkeys, how the Election ſhall be for the one or the other. *Lutw.* 655.

Paying ſo much Rent, or ſo many Turkeys, how the Election ſhall be.

G **Aſſignee** of Rent upon a Leaſe for Years ſhall have Debt for it. 1 *Lev.* 22. But it muſt be brought where the Land lies.

Debt lies for an Aſſignee for Rent.

H **The** Huſband after the Wife's Death is liable to pay the Rent Arrear upon a Leaſe to the Wife. 1 *Lev.* 25.

The Huſband muſt pay the Arrears of Rent upon a Leaſe to his Wife.

I **Avowry** for Rent at a puiſne Day is no Bar to a Rent due at a prior Day, unleſs there be an Acquittance under Hand and Seal. 1 *Lev.* 43.

Avowry for Rent at a latter Day, is no Bar for Rent due at a former Day, unleſs there be an Acquittance under Seal.

K **A Remainder** of a Rent *de novo* was deviſed, and held good. 1 *Lev.* 144.

Deviſe of a Remainder of a Rent *de novo*, held good.

Proviſo to re-enter and retain till the Rent is ſatisfied; what Eſtate it is.

A Rent granted with a Proviſo, That the Grantee may re-enter and retain till ſatisfied; he hath ſuch an Eſtate as will maintain an Ejectment, 1 *Lev.* 170. A

Leaſe for Years of Land in Fee, rendring Rent to his Executors and Aſſigns, the Heir ſhall have the Rent, and why.

Leaſe for Years of Land in Fee-ſimple, rendring Rent to his Executors and Aſſigns: During the Term the Heir ſhall have Debt for the Rent, for the apparent Intent that it ſhall continue after his Death, by the Word *Aſſigns*, and alſo the Words, *during the Term*. 12 *Co.* 36. 2 *Lev.* 23. See Title **Debt**, *Cro. Eliz.* 217. *pl.* 2. *contra*. But this Caſe in *Cro. Eliz.* was afterwards anſwered with all the other Caſes that could be remembred, by a Caſe in 2 *Saund.* 367. and by *Raym.* 213. where it was adjudged, after very great Deliberation, That the Reſervation being during the Term, it ſhall run with the Reverſion, and ſo goes to the Heir. B

A Rent-Service is tendered at the Day, yet there may be a Diſtreſs for it.

A Rent-Service is tendered at the Day upon the Land, yet the Lord may diſtrein without a perſonal Demand; for a Diſtreſs is both a Demand and a Diſtreſs: And where Rent ought to be demanded, and where not, ſee *Hob.* 207, 208. C

A Rent reſerved upon a Gift in Tail, is not barred by a Recovery.

A Rent reſerved upon a Gift in Tail, is not barred by a Common Recovery, but remains as a collateral Charge upon the Land, diſtreinable of Common Right. 2 *Lev.* 30. D

Debt will lie for Rent, where there is no Reverſion.

Debt will lie for Rent as a Sum in Groſs, where there is no Reverſion. 2 *Lev.* 80. *Carth.* 170, 171. But there can be no Diſtreſs for it. E

The Aſſignor of the whole Term reſerves an annual Rent during the Term.

It is no Rent, but only a Sum in groſs due by Contract.

A Man poſſeſſed of a Leaſe for Years aſſigns it to *J. S.* paying during the Term 40 *l. per Ann.* at the two Feaſts, the Leſſee having aſſigned over all his Term reſerving this Rent; it is not attendant upon the Reverſion, but is only due by Contract. *Cro. Jac.* 486. *pl.* 6. 487. F

No Attornment is neceſſary to a Deviſe for Rent.

No Attornment is neceſſary to a Deviſe for Rent, becauſe there is no compelling the Tenant to attorn. 2 *Lev.* 240. G

Debt for Rent will lie for Copyhold and Freehold together.

Debt for Rent will lie for Copyhold and Freehold together. 3 *Lev.* 39. H

Lies upon a Leaſe of Land, and Flock of Sheep.

Debt for Rent lies upon a Leaſe of Land, and Flock of Sheep. *Ibid.* 150. I

Covenant lies for Rent againſt Leſſee after Aſſignment by the Grantee in Reverſion.

Covenant for Rent lies after an Aſſignment againſt Leſſee by the Grantee in Reverſion; and this although Notice and Acceptance of the Rent had been pleaded, it being upon an expreſs Covenant. *Ibid.* 233. K

How to bring Debt againſt an Aſſignee of an Executor.

How to bring Debt for Rent againſt an Aſſignee of an Executor of a Leſſor. *Ibid.* 295, 296. L

A **Where** a *Quantum Meruit* lies for Rent. See Title **Aſſumpſit.**

Where a *Quantum Meruit* lies for Rent.

B **If** a Man hath a Rent-Service or Rent-Charge, and grants it to another by Deed for Life, rendering a Rent, it is void; becauſe a Rent cannot be charged with another Rent. *Keilw.* 161. *b.* 162. *a.*

A Rent cannot be reſerved out of a Rent.

C **When** the Rent continues of any Eſtate of Freehold, Debt will not lie for it. 4 *Rep.* 29. *a.* But when the Eſtate of Freehold is determined, it will lie by the Statute. *Ibid.*

Where Debt will not lie for Rent.

D **A Man** makes a Leaſe for Life, rendring Rent, the Rent is Arrear, the Leſſor dies, the Executors ſhall not have Debt during the Life of the Tenant for Life *, but after the Eſtate for Life is determined, Debt lies by the Statute. 4 *Rep.* 149. *b.*

Debt lies for Arrear of Rent, after the Death of Tenant for Life.

* Now by the Statute of 8 **Annæ**, Debt lies by the Leſſor againſt his Tenant for Life.

E **Whereas** Debt did not lie at Common Law for Rent upon a Leaſe for Life, now by the Statute of 8 *Annæ*, it is enacted, That any Perſon having Rent Arrear upon any Leaſe for Life, may bring an Action of Debt for ſuch Arrears, in the ſame Manner as if reſerved upon a Leaſe for Years.

Debt lies for Rent upon a Leaſe for Life. 8 **Annæ.**

F **See** the Statute of 32 *H.* 8. *cap.* 37. which impowers Executors to diſtrein for Arrears of Rents or Fee-Farms, in ſuch Manner as the Teſtator might have done, if living.

What Remedy Executors have to recover Arrears of Rent or Fee-Farms. 32 **H.** 8. **cap.** 37.

G **And** alſo any Man, who in Right of his Wife ſhall have any real Eſtate in any Rents or Fee-Farms which ſhall be due, and in Arrear at her Death, may after her Death bring Debt for thoſe Arrears. 4 *Rep.* 50, 51. *b.*

So alſo for Husbands in the Right of their Wives.

H **See** Title **Attornment,** where by the Statute of 4 & 5 *Annæ*, *For the Amendment of the Law*, Attornments are taken away.

For Attornment. 4 & 5 **Annæ.**

I **Where** an annual Sum is appointed to be paid to a Stranger, it is not a Rent, but a Sum in Groſs. 1 *Leon.* Caſe 362. 3 *Salk.* 302.

Where a Rent, and where a Sum in Groſs.

K **There** is a Difference where a Man makes a Gift in Tail, reſerving a Rent; and where a Donor grants a Rent out of a Reverſion: In the one Caſe the Rent may be barr'd by a Recovery againſt the Tenant in Tail, but in the other Caſe it cannot; but the Rent ſhall remain at the leaſt a Rent-Seck. *Cro. Car.* 598. See Title **Recovery.**

Where in one Caſe a Rent may be barr'd by a Recovery againſt the Tenant in Tail, and where it cannot, but muſt remain a Rent-Seck.

L **If** a Rent-Seck be not demanded at the Day, it muſt afterwards be demanded of the Perſon; for there is no Remedy for that Rent but an Aſſize: And a Diſſeiſor a Man cannot be, nor Damages recovered againſt him without a wilful Default.

What Remedy for a Rent-Seck, and how to be demanded.

Seiſin of a Rent-Seck decreed.

A **An** Annuity was deviſed, which was a Rent-Seck, there being no Seiſin nor Power of Diſtreſs: The Chancery decreed the Deviſor of the Land to give Seiſin of the Rent to the Deviſee of the Annuity. *Chan. Rep.* 147.

Tenant at Will.

B **Rent** may be diſtrein'd for by Tenant at Will. *Comber.* 255.

Aſſignee.

C **The** Aſſignee of a Leaſe is diſcharged of the Rent by an Aſſignment over without Notice. *Ibid.* 192.

Whereout it ſhall iſſue.

D **If** a Man demiſes *A.* and *B.* for ſo much Rent, and hath nothing in *A.* the whole Rent ſhall iſſue out of *B.* *Vide Comber.* 238. *in pede.*

Where Tenant for Life may detain the Rent.

E **Tenant** for Life makes a Leaſe reſerving Rent, and dies ſome Time before the Rent-day is come, the Tenant may detain the Rent; and yet a ſmall Matter will make him Tenant at Will of the Reverſion. *Ibid.* 255.

Taxes.

F **A Rent** granted with a Covenant that it ſhall be for ever paid free from all Taxes. *Quære*, If this ſhall extend to Parliamentary Taxes. *Ibid.* 424, 466.

Action of Debt.

G **Where** an Action of Debt for Rent was brought where the Plaintiff had no Reverſion. *Carth.* 170, 171.

Action.

H **An** Action for Rent due and on a Bond are in equal Degree. *Ibid.* 511. 3 *Salk.* 161.

When Rent due.

I **The** Leſſor died on the very Day the Rent was payable, and held not to be due 'till the laſt Minute of that Day. *Mod. Caſes in Law and Equity* 21.

Where the Plaintiff could not have Judgment.

K **Where** part of it became due pending an Action of Debt againſt an Adminiſtrator, the Plaintiff could not get Judgment. 3 *Salk.* 4.

Aſſignee.

L **Where** an Action of Debt for Rent may be brought by an Aſſignee. *Ibid.* 118.

Plea.

M **Where** *Nil habuit in tenementis* is a good Plea to an Action of Debt for Rent. *Ibid.* 211, 302.

Diſtinct Actions.

N **Where** every Quarter's Rent is a ſeveral Debt, for which diſtinct Actions may be brought. *Ibid.* 303.

O **By** an Act paſſed in the Fourth Year of his preſent Majeſty King *George* the Second, for the more effectual preventing Frauds committed by Tenants, and for the more eaſy Recovery of Rents and Renewal of Leaſes, **It is Enacted,** *That in Caſe any Tenant for Life, or any Term of Years, or other Perſon coming into the Poſſeſſion of Lands or Tenements by Colluſion with ſuch Tenant, ſhall wilfully hold over any Lands or Tenements after the Determination of ſuch Term or Terms, and after Demand made, or Notice in Writing given, for delivering the Poſſeſſion thereof by the Landlord or Leſſor, the Perſon ſo holding over ſhall pay double the yearly Value, and the Defendant in ſuch Action ſhall give Special Bail, and have no Relief in Equity.*

Repeal.

See **Attorney.**

A THE Defendant cannot repeal his Warrant of Attorney, given to an Attorney to appear for him; but he is compellable to appear by his Attorney according to his Warrant, by the Rules of the Court, that he may not delay his Appearance by that Means to the Prejudice of the Plaintiff. (*Trin.* 22 *Car.* 1. *B. R.*) And there is very good Reaſon for it; for by this, ſpeedy Juſtice would be evaded; which the Law will not permit.

The Defendant is compellable to appear according to his Warrant of Attorney.

Replevin.

See
Avowry.
Declaration.
Homine Replegiando.
Pleas and Pleadings.
Property.
Suggeſtion.

B REplegiare **is compounded of** Re **and** Plegiare, viz. **to re-deliver upon Pledges or Sureties: Goods may be replevied two manner of Ways,** viz. **By Writ, which is by the Common Law; or by Plaint in the Sheriff's Court, which is by the Statute: And the Sheriff ought to take two Sorts of Pledges, one by the Common Law,** viz. Plegii de proſequendo; **and another by the Statute,** viz. Plegii de Retorno Habendo. **And the Party deſiring of it, and giving of ſuch Security as is by Law required, ſhall upon any Diſtreſs made for Rent, or otherwiſe, have his Replevin. See** Co. Litt. 145. b.

Replevin, what.

Two Sorts.
Weſtm. 2. cap. 2.

It

Where the Defendant upon his bare Suggeſtion ſhall have his Cattle returned.

A If in Replevin in the Country the Plaintiff doth not declare, and the Avowant removes the Cauſe to the King's Bench, and the Plaintiff is nonſuited without declaring; it ſeems in this Caſe the Defendant may ſuggeſt what Cattle he took, and ſhall have a Retorn of them. *Raym.* 33, 34.

If the Lord avows according to the Statute of 21 *H.* 8. how the Plaintiff in Replevin may plead.

B The Statute of 21 *H.* 8. diſcharged the Strictneſs of the Common Law concerning Avowries, *&c.* ſo that when the Lord avows according to the Statute, the Plaintiff in the Replevin may have every Plea that the very Tenant might have had, though he be a Stranger to the Lord. *Id.* 255.

Tenant for Years is within the Statute.

C And Tenant for Years is within the Statute. *Id.* 256.

At Commom Law Tenant might plead any Plea to an Avowry for a Rent-Charge.

D At the Common Law a Tenant may plead any Plea in Bar to an Avowry for a Rent-Charge. *Id.* 256.

No Second Deliverance after Verdict.

E No Second Deliverance after Verdict, but on a Nonſuit. 3 *Keb.* 76.

No Inquiry on Demurrer till Avowry.

F No Inquiry on Demurrer until there be an Avowry. *Id.* 837.

It lies not by Baron and Feme of taking *dum ſola.*

G Replevin lieth not by Baron and Feme of taking *dum ſola.* 2 *Keb.* 641. *pl.* 10.

Avowry for Rent due at a later Day, is no Bar to what was due at a former.

H Avowry for Rent due at a later Day, is no Bar in an Avowry for Rent due at a former Day. 1 *Lev.* 43.

A Replevin ought to be certain, and why.

I A Replevin ought to be certain in ſetting forth the Number and Kinds of the Cattle diſtreined, or elſe it is not good; becauſe if it be uncertain, the Sheriff cannot tell how to make Deliverance of the Cattle, if a Writ be directed to him for that Purpoſe, becauſe he knows not particularly what the Cattle were that were diſtreined; which ought to have been expreſly mentioned to that Intent in the Replevin. *Trin.* 23 *Car. B. R.*

How to plead when he juſtifies in his own Right, and how when in Right of another.

K Where in a Replevin a Man juſtifies the taking of Cattle in his own Right, he muſt ſay, *bene advocat captionem averiorum,* &c. which is called an Avowry; but where he juſtifies in the Right of another Perſon, then he ſays, *bene cognovit captionem,* &c. which is call'd a Conuſance.

How to plead Property in a Stranger.

L In a Replevin where the Defendant pleads Property in a Stranger, he muſt after his Plea make his Sugeſtion thus, *Et pro retorn. habend. idem* the Defendant *dicit quod,* &c. and ſo ſet forth particularly why he took the Goods; for if a Verdict paſs for him, he cannot, without ſuch Suggeſtion entred upon the Roll, have a Return.

A **Replevin** lies not for Money. *Moor, Caſe* 510.

Replevin lies not for Money.

B **A Declaration** in Replevin for taking of *centum oves, matrices & vervices*; and it doth not appear how many Ewes and how many Wethers; and for this Reaſon adjudged to be naught. *Aleyn* 32, 33. But if it had been *oves* without Addition, it had been good.

The Declaration was for taking *centum oves matrices & vervices*, and naught.

C **In** a Declaration in Replevin the Plaintiff counts for taking of two Heifers *tale die apud W.* and doth not ſay *apud W. in quodam loco ibidem vocato*, &c. And upon a Demurrer held to be inſufficient. *Moor, Caſe* 925.

A Declaration in Replevin doth not ſay in what Place the Cattle were taken, is naught.

D **If** the Sheriff returns inſufficient Pledges, they are no Pledges within the Statute of *Weſtm.* 2. *c.* 2. and the Sheriff ſhall be chargeable as if he had not taken any Pledges.

Inſufficient Pledges are no Pledges.

E **If** he returns the Pledges upon the Writ, if the Plaintiff be nonſuit, and upon the Writ of *Retorn. Habendo*, the Sheriff returns *averia elongata*, the Party may have a Retorn of the Beaſts of the Pledges: But if the Deliverance were by Plaint, becauſe the Pledges do not appear to the Court, he can have no ſuch Writ.

Where there ſhall be a Return of the Beaſts the Pledges.

This, where it is by Writ.

How, where by Plaint.

F **And** if the Sheriff returns *nihil* upon the Writ for a Return of the Beaſts of the Pledges, then the Party may have a *Sci. Fa.* againſt the Sheriff, *quod reddat ei tot averia.*

Where the Sheriff is to anſwer in Default of the Pledges.

G **By** the Statute of 4 & 5 *Annæ*, it is enacted, That any Tenant or Defendant in any Suit, or any Plaintiff in Replevin in any Court of Record, may (with Leave of the Court) plead as many ſeveral Matters thereto, as he ſhall think neceſſary for his Defence.

How many Matters a Defendant or Plaintiff in Replevin may plead.

4 & 5 **Annæ.**

H **A Declaration** in Replevin was brought by Bill, which is naught upon a Demurrer: Becauſe no Second Deliverance can go, if the Plaintiff be nonſuited.

Declaration in Replevin by Bill, is naught.

The Reaſon why.

I **No** Replevin lies of Goods taken beyond the Seas, though brought afterwards into *England*. *Show. Rep.* 91.

Lies not for Goods taken beyond Sea.

K **A Replevin** lies not againſt the King, nor where the King is a Party, or any Thing taken in his Right. 3 *H.* 7. *fol.* 19. *b.* 1. *a.*

It lies not againſt the King, nor where he is a Party.

L **A Replevin** was brought by Plaint in *London*, and the Defendant found Pledges to make a Return, if the Return ſhould be adjudged: Afterwards, and before any Judgment, the Record of the Plaint and Pledges was removed into the King's Bench by a

How it is upon Removal of a Plaint in Replevin by *Certiorari* into the King's Bench.

A Return adjudged.

Sci. Fa. againſt the Pledges.

Inſiſted on, that it ſhould have been removed by *Recordare.*

At laſt adjudged good. **Weſt.** 2. **cap.** 2.

Certiorari, and a Return adjudged in the King's, Bench, and upon a *Sci. Fa.* againſt the Pledges, they appeared and demurred thereunto: It was inſiſted, That the Benefit of the Pledges were loſt upon the Removal of the *Certiorari*, which is no Original: But if it had been by *Recordari*, there it is ſaid in it, *& ad eundem diem præfigas partibus*, &c. which is in the Nature of an Original; but in this Caſe there is no Original: But on the other Side it was ſaid, That the Writ of *Certiorari* did certify the Record *cum omnibus ea tangentibus*; and afterwards upon great Conſideration, Judgment was given for the Plaintiff. *Dorrington* againſt *Edwin*. *Mich.* 36 *Car.* 2. *Ro.* 277. See Stat. *Weſtm.* 2. *cap.* 2. 2 *Sid.* 213. *Noy*.

Caſe was brought for delivering the Cattle upon a Replevin without taking of ſufficient Pledges. **Weſt.** 2. **cap.** 2.

A **In** Action on the Caſe was brought againſt a Mayor of a Corporation for delivering of the Cattle upon a Replevin without finding Pledges to make a Return, if a Return ſhould be adjudged according to the Statute of *Weſtm.* 2. *cap.* 2. And it was adjudged againſt him; and it was ſaid by the Court, That if he had taken but one Pledge, if he had been ſufficient, it had been well enough; but it is at his Peril if the Pledges are not ſufficient. *Cro. Car.* 446. *pl.* 16.

Breaking of Doors and Locks need not be anſwered in Replevin, but muſt in Treſpaſs.

B **Count** in a Replevin for breaking of his Doors and Locks, and carrying away of his Goods and Cattle: The Defendant avows for a Rent-Charge, and ſays nothing of the breaking of the Doors, *&c.* *Cur.* He need not anſwer it here, but in an Action of Treſpaſs he muſt. *Trin.* 7 *W. B. R.*

A Declaration in Replevin upon a Removal out of a County-Court.

C **See** Title **Declaration,** for a Declaration in Replevin, where the Cauſe was removed out of the County-Court, the Damages being under 40 *s.*

In a Replevin for taking of four Beaſts, the Defendant had a Return adjudged.

Then he ſurmiſed that forty Beaſts were taken, and prayed a Deliverance, of them; for that four were not ſufficient to ſatiſfy him, or that the Sheriff ſhould aſſign him his Bond.

But he was without Remedy, not having avowed for and prayed a Return of the Forty.

D **In** a Replevin for taking of four Beaſts, the Defendant had a Judgment for a Return, and he then ſurmiſed that forty Beaſts were taken and impounded, and were not all delivered back, and prayed that the Sheriff ſhould make a Deliverance to him of forty, for four were not a ſufficient Diſtreſs for his Rent due; and he having taken Security to proſecute for forty, he prayed that he ſhould deliver all the Cattle, or his Bond to proſecute. *Cur. contra*, For the Plaintiff having declared but of four Beaſts taken, and the Defendant having agreed that four only were taken by avowing for them, he is therefore without Remedy: But he might in his Avowry have ſhewn that forty Beaſts were taken, and have avowed for all, and prayed a Return of all, altho' the Plaintiff had not declared for ſo many. *Cro. Jac.* 611. *pl.* 6.

A In a Declaration in Replevin, if the Plaintiff ſays that the Defendant *ſummonitus fuit ad reſpondendum* to him *de Placito quod cum cepit Averia* of the Plaintiff; this Declaration with a *Quod cum* is ſtark naught, either upon a Demurrer, or after a Verdict: But it ſhould be *de Placito quare*, or *de Placito quod* only; becauſe *Quod cum* is but a Recital, and no direct Affirmation: So that the Plaintiff hath not by his Declaration made any Charge againſt the Defendant.

Quod cum in a Declaration in Replevin, is naught.

B If the Cattle of ſeveral Perſons are taken, they ſhall not join in a Replevin, but muſt have ſeveral Replevins.

If the Cattel of ſeveral Perſons are taken, they cannot join in a Replevin.

C By the Statute of 21 *H.* 8. *cap.* 19. *ſect.* 3. in all Caſes where the Avowant avows for Damage Feaſant, or upon a Diſtreſs for Rent, and the Verdict be found for him, he ſhall have his Damages aſſeſſed by the Jury upon the Trial.

The Avowant for Damage Feaſant or Rent ſhall have Damages found by the Jury, if the Cauſe goes for him.
21 H. 8. cap. 19.

D In an Avowry for Damage Feaſant in his Freehold, the Iſſue was upon the Freehold. *Cro. Eliz.* 668. *pl.* 25.

In an Avowry for Damage Feaſant the Iſſue was upon the Freehold.

E In an Avowry for Damage Feaſant the Defendant ſays, that his Father was ſeized in Fee, and died ſeiſed, and the Lands deſcended to him as his Son and Heir: The Plaintiff replies, and concludes with a Traverſe, that he was at the taking, *& adhuc eſt* ſeiſed in Fee: And found for the Plaintiff, and moved, that *adhuc* ſeiſed is more than is in the Avowry; but held good after a Verdict. *Aleyn.* 32, 23.

Avowry for Damage Feaſant upon a Seiſin in Fee, and dying ſeiſed; with a Traverſe.

F Upon a *Retorno Habendo* awarded upon a Nonſuit for not declaring, the Sheriff may be commanded by a judicial Writ to make Return; in which Writ there ſhall be a Clauſe, That the Sheriff ſhall not make a Delivery without a Writ making mention of the Judgment, which Writ iſſues from the Roll of the Judgment, which is a Writ of Second Deliverance; upon which Writ the Sheriff muſt take Security for the Suit, and ſo make a Return of the Cattle, or the Price of them, if a Return ſhall be adjudged; and the Diſtrainor ſhall be attached to appear in Court. 13 *E.* 1. *cap.* 2. *ſect.* 3.

How to ſue out a Writ of Second Deliverance.

13 E. 1. cap. 2. Sect. 3.

G No Second Deliverance lies after a Judgment upon a Demurrer, or after a Verdict or Confeſſion of the Avowry: But in all theſe Caſes the Judgment muſt be entred with a Return irrepleviſable; but upon a Nonſuit, either before or after Evidence, a Writ of a Second Deliverance will lie, becauſe there is no Determination of the Matter; and there a Writ of Second Deliverance lies to bring the Matter into Queſtion: But in the Caſe of a Demurrer and Verdict, the Matter is determined by Law; and in the Caſe of a Confeſſion it is determined by the Confeſſion of the Party. *Mich.* 7 *W. B. R.* See 2 *Inſt.* 340, 341. and *Weſtm.* 2. *c.* 2.

Where a Writ of Second Deliverance lies, and where not.

A Writ of Second Deliverance is a *Superſedeas* to the *Retorno Habendo*, not to the Inquiry.

A **In** a Replevin, if the Plaintiff was nonſuited, and the Defendant had a *Retorno Habendo*, and a Writ of Inquiry of Damages; and the Plaintiff brings a Writ of Second Deliverance, it is a *Superſedeas* to the Return, not to the Writ of Inquiry. *Latch.* 72.

It lies after a Nonſuit, after Evidence given on both Sides upon a Trial.

B **Where** upon the Trial of an Iſſue in Replevin the Jury come to the Bar to give their Verdict, and the Plaintiff becomes nonſuit, there ſhall not a Return irrepleviſable be awarded, as in caſe a Verdict had been given; but the Party may have his Writ of Second Deliverance upon giving of Pledges, as well as if he had been nonſuit before Declaration or Appearance. 3 *Leon.* Caſe 70.

If the Jury do not enquire of the Value of the Cattle, and of the Rent due, it cannot be ſupplied afterwards.

C **In** a Replevin, if the Jury do not enquire, as well of the Value of the Cattle diſtreined for Rent, that they may be ſold according to the *Oxford* Act, as alſo of the Rent due, they ſhall not have a Writ of Enquiry to ſupply it. 1 *Lev.* 255. See the Statute of 18 *Car.* 2. *cap.* 7. in Title **Avowry**, how the Proceedings to be in this Caſe.

The Avowry may be upon the Land in a Second Deliverance.
21 **H.** 8. cap. 19.

D **The** Lord, Bailiff or Servant, upon a Writ of Second Deliverance, may avow, juſtify, or make Cognizance upon the Land without naming of the Tenant, and if he recovers ſhall have his Damages and Coſts. *Sect.* 2, 3.

A Declaration not naming the Place, is naught.

E **In** a Declaration in a Replevin for taking of Cattle, if you do not name the Place where you took them, the Declaration is naught, becauſe of Uncertainty. *Hob.* 16.

The Difference where a Declaration in Replevin is in the *Detinet*, and where in the *Detinuit*.

F **Difference** between a Declaration in the *Detinet*, and when in the *Detinuit*: For in a Replevin in the *Detinet*, the Plaintiff recovers as well the Value of the Goods, as Damages for the Reprizal: But when the Writ and Count is in the *Detinuit contra vad. & pleg. &c.* by this it is implied, that the Plaintiff hath his Goods again. But he ſhall recover his Damages. See *Dal.* 84. *pl.* 36. *Lutw.* 50, 1151.

How the Plaintiff ſhall be reſtored again to his Cattle taken in *Withernam.*

G **The** Plaintiff in a Second Deliverance was nonſuited, and a Writ of Inquiry of Damages awarded, and alſo a *Retorno Habendo*, upon which the Sheriff returned *averia elongata*; whereupon a *Withernam* was awarded, and all the other of the Plaintiff's Cattle delivered to the Defendant; and a Year after the Plaintiff came into Court, and paid the Damages and Coſts; whereupon the Court granted him a ſpecial Writ to reſtore his Cattle, reciting the whole Matter; but there was no Allowance for the keeping of the Cattle; for it is intended their Labour was worth the Charges. 3 *Leon.* Caſe 323. *Litt. Rep.* 54.

A **Where** it appears by the Declaration, that the Defendant took the Cattle, and that by Replevin ſued they were delivered to the Plaintiff; wherefore when the Writ is abated, it is but juſt that the Return ſhould be adjudged to the Defendant that he may be *in ſtatu quo prius:* As if the Plaintiff were nonſuited before a Declaration, the Defendant ſhall have a Return, becauſe he is prevented of his Avowry, ſo as he cannot pray it. *Cro. Jac.* 519. *pl.* 1.

Where the Defendant ſhall have a Return when the Writ is abated, and why.

The Defendant ſhall have a Return upon a Nonſuit before a Declaration, and why.

B **Alſo** a *Retorno Habendo* ſhall be awarded in every Caſe where it appears that the Defendant was in Poſſeſſion of the Cattle, if they were delivered by Replevin. *Ibid.*

Note, The Defendant ſhall have a Return in every Caſe where the Defendant was poſſeſſed of the Cattle, if they were delivered by Replevin.

C **In** a Replevin the Defendant traverſeth the Place where, *&c.* and for a *Retorno Habendo* ſays, That the Queen was ſeiſed of the Manor, and leaſed to him; the Plaintiff demurred, becauſe he ought to have ſhewn what Title the Queen had. *Curia*, The Plea is in Abatement of the Writ, and the Avowry *pro Retorn' Habend'* is not traverſable, and it is good without Title ſhewn: And afterwards the Court gave Judgment, That the Writ and Count ſhould abate, and that the Avowant ſhould have a Return irreplevisable. *Long & Gelder, Paſch.* 6 *W. B. R.*

In a Replevin the Plaintiff traverſes the Place of taking, and makes a Suggeſtion for a Return, and good.

D **Where** in Replevin the Servant makes Conuſance as Bailiff, and the Maſter pleads *Non cepit*, the Servant ſhall not have a Return. *Show. Rep.* 169.

The Servant makes Conuzance, and the Maſter pleads *Non cepit*, there ſhall be no Return

E **In** Replevin a Verdict was found Part *pro Queren'* with Damages and Coſts, and Part *pro Defend'* with Damages and Coſts, how the Judgment ſhall be. See *Lutw.* 1194. So where Part is upon a Demurrer. 1196, 1197.

Part found for the Plaintiff, and Damages and Coſts, and Part for the Defendant, how the Judgment to be.

F **In** an Avowry for Rent, Part was found for the Plaintiff, and Damages and Coſts (which ſhould not have been) and Part for the Avowant; the finding of Damages and Coſts for the Plaintiff is void: For when Part is found for the Avowant, he ſhall have a Return with Damages and Coſts. *Cro. Jac.* 473. *pl.* 3.

In an Avowry for Rent, Part found for the Plaintiff, and Part for the Avowant, the Avowant ſhall have Damages and Coſts, and Return.

G **Pleading** of a Seiſin in Replevin, without ſaying of what Eſtate, is naught: But it is good Pleading in Treſpaſs. *Lutw.* 1316.

How to plead a Seiſin in Replevin.

H **In** Replevin the Defendant traverſes the Property in the Plaintiff; this is good either in Bar or Abatement, and the Defendant need not make a Suggeſtion for a Return: For the Goods not being the Plaintiff's, the Avowant is to have a Return; but in Treſpaſs it muſt be only Not guilty. 2 *Lev.* 92.

Defendant traverſes the Property in the Plaintiff, it is good either in Bar or Abatement.

Need not to make a Suggeſtion, and why.

Where Property is claimed, there ought to be no Replevin.

If Property be claimed in Replevin, and notwithſtanding the Party replevies, Treſpaſs will lie, and the Claim or Notice of the Property ſhall be the ſole Iſſue. *Mod. Caſes* 69. A

A Bailiff may plead Property.

A Bailiff pleads Property in Replevin, and it is good. 1 *Lev.* 90. B

Defendant may avow or juſtify: If he avows, he ſhall have a Return; if he juſtifies, he ſhall not.

In Replevin the Defendant may avow or juſtify: If he juſtifies, he cannot have a Return, as he ſhall have if he avows. 3 *Lev.* 204, 205. C

Pledges.

Pledges are to be therein, whether it be by Writ or Plaint. *Comberb.* 1, 2. D

When liable.

And the Pledges are liable after Removal by *Certiorari* or *Pone*. *Ibid.* E

Security to the Sheriff.

The Sheriff uſually takes an Obligation to proſecute and to make a Return, which is inſtead of Pledges, and the better Way. *Comberb.* 228. F

Where an Avowry for a Return not neceſſary.

Where a Plea in Abatement goes to the Point of the Action, there needs no Avowry to have a Return. *Ibid.* 333. G

Elongata.

If the Sheriff cannot find the Cattle, he will return an *Elongatus* of Courſe. *Ibid.* 306, 307. H

Traverſe.

Where the original Seiſin ſhall be traverſed in a Replevin. *Ibid.* 230. I

A *Superſedeas* to the *Withernam.*

In a *Homine replegiando*, if the Sheriff returns *Elongavit*, and a *Capias* in *Withernam* iſſues, if the Defendant will plead *non cepit*, a *Superſedeas* ſhall be awarded to the *Withernam*. *Ibid.* 200, 201. K

Gage Deliverance.

And then he ſhall not gage Deliverance. *Ibid.* 306, 307. L

How *Withernam* to iſſue.

And Note, a *Capias in Withernam* can't iſſue but into one County at once. *Ibid.* 28. M

By Plaint or Original.

A Replevin may be by Plaint in the Country as well as by Original here. *Salk.* 701. N

Who to grant Replevins.

Bailiff of a Hundred can't grant Replevins out of Court. *Ibid.* 580. O

A Clerk of the County Court granted a Replevin without Bond or Surety to proſecute. *Ibid.* 467. P

Sheriff's Return.

The Sheriff in Replevin can't return that the Cattle, *&c.* were not taken. *Ibid.* 581. Q

When to plead *Non Cepit.*

But after an *Elongata* return'd, and *Withernam* awarded, the Defendant may plead *non Cepit*. *Ibid.* R

When to have a Return.

Upon pleading *non Cepit*, or claiming Property, the Defendant ſhall have his Goods again. *Ibid.* S

Bailed on a *Non Cepit.*

So in a *Homine Replegiando* he ſhall be bailed on a *non Cepit*. *Ibid.* T

When no *Withernam* to Iſſue.

But on an *Elongata* return'd therein, if he pleads *non Cepit*, no *Withernam* ſhall iſſue. *Salk.* 582. U

A **And** in a *Homine Replegiando* the Defendant can't be bail'd before Return of the *Withernam. Salk.* 582.

Bail.

B **Alſo** the Plaintiff is demandable on the Return of the *Withernam*, and may be Nonſuit for not appearing. *Ibid.*

When the Plaintiff to be Nonſuit.

C **And** there may be a new *Capias* in *Withernam*, after the Defendant had been bailed on the firſt. *Ibid.*

New *Capias* after Bail on the firſt.

D **For** a *Withernam* is only *meſne Proceſs*, and not an Execution. *Ibid.*

E **Want** of Addition is not pleadable to a *Homine Replegiando*, or in a Replevin. *Ibid.* 5.

Want of Addition.

F **In** a Replevin Property in a Stranger is pleadable in Bar or Abatement. *Vide* Abatement. *Ibid.* 3, 5.

Property.

G **How** *Priſel in auter lien* muſt conclude, and muſt make Suggeſtion for a Return. *Ibid.* 3, 94.

Taking in another Place.

H **And** all Pleas in Abatement in Replevin (except Property) muſt ſuggeſt *in alter* for a Return. *Ibid.* 93, 94.

Where to be a Suggeſtion for a Return.

I **A Writ** of ſecond Deliverance is a *Superſedeas* to the *Retorno habendo*, but not the Writ of *Inquiry*. *Ibid.* 95.

Writ of Second Deliverance.

K **In** a Plea in Bar of Tender of Rent in Replevin, *Q.* if the Money is to be brought into Court. *Ibid.* 583, 597.

Tender.

L **But** ſee the Reaſon why it ſhall not. *Ibid.* 58.

M **And** therein *de injuria ſua abſque hoc quod fuit in aretro* amounts the General Iſſue. *Ibid.*

What amounts to the general Iſſue.

N **Note,** The Command or Authority in Replevin is not traverſable. *Ibid.* 409.

What not traverſable.

O **Avowry** for Rent where Part is not yet due, is Error, but may be cured before Judgment, by abating the Avowry as to that. *Ibid.* 580.

What Error, and how to be cured.

P **In** Replevin the *Avowant* is in Nature of a *Plaint. Carthew* 122, 179.

Avowant.

Q **What** Pleadings in Replevin have been deemed good, and what not good. *Vide Carthew* 186.

Pleadings.

R **Replevin** where the Condition of a Bond in Replevin in an inferior Court was held good. *Ibid.* 248.

Condition of a Deed.

S **See** where good when replevied, tho' diſtrained on a Conviction of keeping Dogs, Nets, *&c.* not qualified. *Mod. Caſes in Law and Equity* 208.

Goods replevied taken by the Act for deſtroying Game.

T **In** Replevin there is to be no Stay of Proceedings on bringing what is due for Damages. *Ibid.* 379.

Money into Court.

U **A** *Sci. fa.* againſt the Pledges in Replevin is in Nature of a Declaration, and amendable. *Ibid.* 313.

Scire facias amendable.

Replication and Repleader.

See { **Iſſue. Pleas.**

A Replication, what.

A Repleader, what.

A Replication is the Plaintiff's Anſwer to the Defendant's Plea. A

A Repleader is to be only where the Pleading hath not brought the Iſſue in Queſtion, which was to have been tried. B

Three Replications; one ſuperfluous, and two ſufficient; Defendant demurs generally, Plaintiff may have Judgment.

If there be three Replications, and one of them ſuperfluous, and the other two ſufficient, and the Defendant demurs generally, the Plaintiff may have Judgment upon them which are ſufficient. 1 *Saund.* 338. C

Replication entire and ill in Part, is ill in the whole.

A Replication being entire, and ill in Part, is ill in the Whole. 2 *Saund.* 17. D

Intire Plea to *Indebitatus Aſſumpſit* and *Inſimul computaſſet*, and intire Replication, and fails as to one; adjudged againſt the Plaintiff.

If the Defendant pleads one entire Plea to an *Indebitatus Aſſumpſit*, and an *Inſimul computaſſet*, and the Plaintiff makes one entire Replication to the Plea, and the Replication fails as to one of them, it ought to be altogether adjudged againſt the Plaintiff, altho' it be ſufficient as to the other. *Id.* 127. E

Where Plaintiff may not reply *De injuria ſua propria.*

Where in Treſpaſs the Defendant by his Plea claims Intereſt in the Place where, *&c.* the Plaintiff may not reply *De injuria ſua propria. Id.* 295. F

Where *De injuria, &c.* is ill.

De injuria ſua propria, where the Bar contains Title, is ill. 1 *Lev.* 307. G

If Iſſue be improper, where ſhall be a Repleader, and where not.

When the Iſſue is improper or immaterial, where there ſhall be a Repleader, and where not. 1 *Lev.* 32. H

Bond conditioned to do a collateral Act: Good Breach muſt be aſſigned.

If a Condition of a Bond be to do a collateral Act, and not to pay Money, a good Breach ought to be aſſigned. 1 *Lutw.* 422. I

Repleader formerly awarded on Writ of Error.

As to a Repleader, it is obſerved, that in ancient Time it was uſual to award a Repleader upon a Writ of Error in *B. R.* though not at this Day. 2 *Saund.* 319. See before Title **Iſſue.** K

A **Not** grantable after Iſſue entred, unleſs after Trial or Demurrer. 3 *Keb.* 664.

Not grantable after Iſſue entred.

B **Repleader** after Demurrer and Argument. 3 *Lev.* 440.

After Demurrer and Argument.

C **Cannot** be on a Writ of Error. 2 *Keb.* 789.

Not on Writ of Error.

D **Judgment** reverſed in *B. R.* for miſpleading, they cannot grant a Repleader. 2 *Lev.* 12.

Nor after Judgment reverſed for miſpleading.

E **Repleader** denied after Demurrer. *Id.* 142.

Denied after Demurrer.

F **If** the Plaintiff do reply to a Plea in Bar, which is not good, he by his replying to it hath confeſſed it to be good. (*Trin.* 23 *Car. B. R.*) And ſo it ſhall be now taken to be, for he hath loſt his Advantage of demurring unto it, by paſſing by the Defects of it, and replying unto it, and the Court will ſuppoſe he intended not to take Advantage of the Inſufficiency of the Plea, but to proceed to an Iſſue upon the Merits of his Cauſe.

If Plaintiff replies to an ill Plea in Bar, he confeſſeth it good.

G **There** can be no Repleader after a Demurrer joined, without the Conſent of both Parties, becauſe they have by their mutual Conſent put themſelves upon the Judgment of the Court.

No Repleader after Demurrer joined, without Conſent of Parties.

H **If** an Action for the Breach of the Condition of an Obligation be brought, and the Defendant doth crave Oyer of the Condition, and plead that he hath performed the Condition, the Plaintiff in his Replication muſt ſhew in what particularly the Defendant hath broken the Condition. (*Paſch.* 24 *Car. B. R.*) That the Defendant may be able to give a particular Anſwer to the Breach aſſigned; and if he do not aſſign a particular Breach, his Replication is idle, for it ſays no more than what was formerly ſaid in the Declaration, *viz.* generally, that the Condition is broken, which the Defendant in his Plea denies; and therefore, if the Plaintiff will not join Iſſue upon the Defendant's Plea, but will reply, he muſt there ſhew how the Condition is broken, and then he puts the Defendant to a new Anſwer.

If Defendant pleads Performance of a Condition, the Plaintiff in his Replication muſt ſhew the Breach.

I **A Repleader** is to be awarded when ſuch an Iſſue is joined, that the Court after Trial thereof cannot give a Judgment, as being impertinent, and not determining the Right. *Mod. Caſes* 2.

When a Repleader is to be awarded.

K **Upon** the awarding of a Repleader, they muſt begin from the firſt Fault which occaſioned the bad Pleading, and the Judgment is, *Quod partes replacitent.* Ibid.

Where the Repleading muſt begin.

L **There** ſhall be no Coſts in it. *Ibid.*

No Coſts in it.

M **Tho'** it were reaſonable to award a Repleader before Verdict at Common Law, where the Pleadings appeared to be ſuch on which no Judgment could be after Verdict, yet ſince the Statute when Verdict may cure immaterial or informal Iſſues, it may not be proper to do it. *Ib.* 3.

When and where grantable.

How it is where the Bar is good, and the Replication naught.

Alſo where the Bar and Replication are good, and the Rejoinder naught.

Alſo where the Bar is naught, and the Replication good.

A **If** the Bar be good, and the Replication naught, and Iſſue be taken upon it, and a Repleader awarded, the Bar ſhall ſtand, and there muſt be a new Replication: Alſo if the Bar and Replication are good, and the Rejoinder is naught, and a Repleader is awarded, there muſt be a new Rejoinder: But if the Bar be naught, and the Replication good, and a Repleader awarded, they ſhall replead for the whole anew. *Raym.* 458.

Where there ſhall not be a Repleader.

B **A Repleader** ſhall never be but upon a *Jeofail*, and an Iſſue miſ-joined; and never upon a Demurrer in Law: For if there be a ſufficient Declaration, and a Fault in the Bar, and a Fault in the Replication, the Judgment ſhall be *quod nil capiat per breve*, and not that they ſhall replead; for although the Bar be naught, yet the Parties have paſs'd this: So if the Declaration be good, and the Bar naught, and the Replication naught, and the Rejoinder naught, and there be a Demurrer to the Rejoinder, the Plaintiff ſhall recover, and there ſhall be no Repleader, altho' the Replication is not good. *Dal.* 76, and 77. *pl.* 8. See *poſtea.*

There ſhall be a Repleader upon an immaterial not an improper Iſſue.

C **If** an improper Iſſue is taken, and there be a Verdict upon it, Judgment ſhall be given thereupon, be it for the Plaintiff or Defendant: But where there is an immaterial Iſſue, and after the Verdict the Court doth not know for whom to give Judgment, whether for the Plaintiff or the Defendant, there ſhall be a Repleader. 1 *Lev.* 32. See Title **Iſſues.**

Where a Rejoinder may make a Replication good, and where not.

D **Sometimes** a Replication ſhall be made good by a Rejoinder; but if it wants Subſtance, a Rejoinder can never make it good.

Where a Breach muſt be aſſigned in a Replication, though the Plea be ill.

E **Where** an ill Plea admits or ſuppoſes a Non-payment, or Non-Performance of a Condition, there is no need of a Breach in the Replication: But if the Plea did not admit the ſame, there tho' the Plea was ill, yet if there be aſſigned no good Breach in the Replication, the Plaintiff cannot have Judgment. *Show. Rep.* 214.

A Repleader awarded after a Demurrer and Argument.

F **A Repleader** was awarded by the Court after a Demurrer to the Plea, and an Argument. 3 *Lev.* 440. but 3 *Rep.* 52. *b.* is *econtra.* See *Plow.* 138. *a.* 1 *Leon.* 79. *Cro. Eliz.* 318. *pl.* 4. *Latch.* 248.

How to aſſign a Breach upon a Condition or Covenant broken.

G **If** a Condition or Deed of Covenants do conſiſt of twenty ſeveral Matters which are all broken, in an Action brought upon the Bond for Non-performance of theſe Covenants, the Plaintiff in his Replication formerly muſt aſſign a Breach but in one of them; becauſe by the Breach of one, the Obligation is become as much forfeited as by the Breach of them all; and the Law will never put a Man to ſet forth more than he hath an Occaſion for; for if it ſhould, it would be unneceſſary and ſuperfluous: But upon an Action of Covenant, where Damages only

are

are to be recovered; there, if there be twenty Covenants broken, the Plaintiff may aſſign a Breach of each Covenant particularly, becauſe he is particularly damnified by every particular Breach: But now there is an Alteration of the Law in this Particular, by the Statute of 8 & 9 *W.* 3. *cap.* 10. and 4 & 5 *Annæ*, which ſee in Title **Pleas**.

8 & 9 W. 3. cap. 10. 4 & 5 Ann.

A **A Bar** not anſwered, avoided or traverſed, was an Exception taken to a Replication. *Lutw.* 1342.

A Bar not anſwered, avoided or traverſed.

B **It** is a common Learning, That in every Replication there ought to be a Certainty; for a Bar ought not to be anſwered by Argument. 1 *Leon.* 77.

There muſt be a Certainty in a Replication, and the Bar muſt not be anſwered by Argument.

C **Where** the Plaintiff or Defendant muſt conclude his Plea or Replication to the Country, and where not. *Lutw.* 101.

Where the Plea or Replication muſt conclude to the Country.

D **See** the Form of a Repleader. *Lutw.* 1622.

A Repleader.

E **The** Plaintiff in his Replication *petit judicium & dampna*, omitting *Debitum*; and adjudged, That although it is Form, yet it is but unneceſſary Form; for in praying of Judgment, all is included: And when the Court gives Judgment, *ex conſequenti* they give it for the Debt and Damages. 2 *Lev.* 19.

Unneceſſary Form in a Replication, ſhall not hurt.

F **In** an Action for the Words, *Thou haſt forged a Bond*, the Defendant juſtifies, becauſe the Plaintiff had forged a Bond in the Name of *J. S.* and the Plaintiff replies, *De injuria ſua propria, &c.* this is a good Replication: For though a ſpecial Forgery is alledged, yet it need not be ſpecially reverſed. *Cro. El.* 607.

Where *De injuria ſua propria* generally is a good Replication in an Action for Words.

G **Repleader** not allowed before Trial, nor after a Default. *Salk.* 579.

When allowed.

H **When** awarded the Parties are to begin *de novo* at the firſt Fault. *Ibid.*

Where to begin.

I **If** denied where grantable, or granted where it ſhou'd be denied, 'tis Error. *Ibid.*

If deny'd, 'tis Error.

K **Where** a Defendant makes Default at *Niſi Prius*, no Judgment can be for him, nor a Repleader awarded. *Ibid.* 216.

Where there may be a Repleader, and where not.

L **Where** the Defendant is out of Court by Default, there can be no Repleader. 3 *Salk.* 121.

M **Where** Iſſue is taken upon an immaterial Traverſe, there muſt be a Repleader. *Ibid.* 305.

N **'Tis** not allowed after Demurrer or Writ of Error, tho' formerly it was otherwiſe. *Ibid.* 305, 306.

Report.

The Secondary not to make any Report on the laſt Day of the Term.

BY the Courſe of the Court the Secondary ought not to make any Report of any Matter referred unto him by the Court, upon the laſt Day of the Term; for that Day is properly appointed for Motions only. (*Trin.* 1650. *B. S.*) And if there ſhould ariſe any Queſtion upon the Report, there would be no Time to be given to the Party concerned to ſpeak to it that Term; ſo that the Matter cannot be determined then, and ſo the Report is to no Purpoſe. A

Reputation.

Reputation, what.

Reputation is not what this or that Man ſays or thinks, but that which generally hath been, and many Men have ſaid or thought. 1 Leon. 15. B

General Acceptance will produce a Reputation.

Reputation needs not a very ancient Pedigree to eſtabliſh it, for general Acceptation will produce a Reputation. 1 *Leon.* 15. C

What ſhall be ſufficient to induce a Reputation.

The bare Averment of a Reputation is not ſufficient to induce a Reputation without ſome ſpecial Matter to induce the Court to believe it. *Ibid.* D

Common Reputation muſt be of long ſtanding.

Common Reputation cannot be intended for an Opinion which is conceived of four or five Years ſtanding, but of long Time. E

What Time is ſufficient to make Land paſs in a Mortgage as Parcel of a Manor.

A little Time is ſufficient for the gaining of a Reputation: Nay, Land which was bought in, and occupied with a Manor but two Years before the Mortgage, may paſs as being ſaid and reputed Parcel. *Cro. Car.* 308. *pl.* 9. F

A **By** the Deviſe of a Meſſuage, a Barn, Stable, *&c.* thought not originally belonging to the Houſe, yet if it be uſed and enjoyed together with it, this will be ſufficient Reputation to make it paſs for Part of the Houſe. *Skinner* 188.

Reputation of paſſing in a Deed.

B **Where** a Name of Dignity may be ſupported by Reputation. *Ibid.* 664.

Dignity.

Requeſt.

See { **Covenant.** **Debt.** **Promiſe.**

C WHERE one is to do a collateral Thing, he ought to be requeſted to do it; but where the Thing to be done is a Part of the Contract, there needs no Requeſt to be made to the Party to do it. (21 *Car. B. R.*) For by the Contract he hath taken Notice at his Peril to do it; but it is not ſo of a collateral Thing agreed to be done upon making of the Contract.

There muſt be a Requeſt to do a collateral Thing.

D **Upon** a Promiſe to pay a Duty precedent upon Requeſt, there needs no actual Requeſt. 2 *Saund.* 33.

Not needful on a Promiſe to pay a Duty precedent.

E **But** upon a Promiſe for a Penalty or collateral Sum, there ought to be an actual Requeſt before the Action brought. *Ibid*

Otherwiſe on a Promiſe for a Penalty.

F **Upon** a Promiſe to pay if another does not pay, he need not alledge a Special Requeſt. 33 *Lev.* 363. *Vide eund.* 366.

Not on Promiſe to pay if another do not.

G **Upon** a Promiſe by the Defendant to the Plaintiff of 40 *l.* if the Plaintiff would at the Defendant's Requeſt procure himſelf to be made a Knight, an Action lies without Requeſt, for it is intended to be executed and done at the Time of Promiſe. 2 *Lev.* 198.

Where Action lies without Requeſt on a Promiſe.

H **Upon** Promiſe to deliver before ſuch a Day, he ought to do it without Requeſt. 1 *Lev.* 289.

Promiſe to deliver ſuch a Day, muſt do it without Requeſt.

Action of Covenant for Non-payment need not alledge a Request.

A **Where** one brings an Action of Covenant for not paying of Money according to a Covenant, he needs not alledge that he requested the Defendant to pay it ; but where he brings an Action of Debt for Money due by Covenant, he ought to alledge a Request (*Trin.* 23 *Car. B. R.*) Because in the former Caſe the Plaintiff is but to recover what he is dampnified by not performing the Covenant, and in the latter he is to recover the whole Money covenanted to be paid.

Where *licet ſæpius requiſitus* is not ſufficient, and where it is.

B **Where** one is bound to make a Special Requeſt for the doing of a Thing upon a ſpecial Agreement made by the mutual Conſent of the Parties, there a general *licet ſæpius requiſitus* in the Declaration is not ſufficient ; but where the Law makes the Promiſe, there it is. (24 *Car. B. R.*) For thoſe Words are too general, and meer Matter of Form ; and in a ſpecial Requeſt there ought to be ſet forth the Time and Place, and Manner of the Requeſt made.

Not neceſſary to alledge a Requeſt on an Action of Debt upon Bond.

C **In** an Action of Debt brought for Money due upon an Obligation, it is not neceſſary to alledge a ſpecial Requeſt. (*Trin.* 24 *Car. B. R.*) For the very bringing of the Action is a Demand of the Money in the Judgment of the Law ; and the Party was bound by his own Deed, to pay the Money at his Peril, without being particularly demanded ; but the Declaration is not formal if a general *licet ſæpius requiſitus* is not laid in the Declaration.

Upon Contract in Nature or a Debt, Requeſt or not, is not material ; *aliter* on a ſpecial Contract.

D **Upon** a Contract in the Nature of a Debt, Requeſt or no Requeſt is not material ; but it is otherwiſe if the Contract be a ſpecial Contract for a collateral Thing, as in the Caſe before is particularly ſet forth. *Mich.* 2650. *B. S.*

A Duty is payable *ſans* Requeſt.

E **Where** a Duty is due, it is payable without Requeſt, and it is in the Nature of an Action of Debt. *Cro. Eliz.* 74. See *Cro. Eliz.* 85, 91, 132, 179, 229.

Where a Requeſt is not neceſſary, and where it is.

F **Where** the Action is in the Nature of a Debt, and not appointed to be paid upon Requeſt, there needs no ſpecial Requeſt to be laid in the Declaration ; *aliter*, where it is of a Thing collateral. *Cro. Eliz.* 229. *pl.* 18. 523. *pl.* 8.

Where it is a Stranger's Debt, and no Duty, a *licet ſæpius requiſitus* will not do.

G **Where** it was a Stranger's Debt, and no Duty by the Defendant before the Promiſe, nor payable upon Requeſt, and ſo no Breach till Requeſt made ; therefore to enable the Plaintiff to bring the Action, an expreſs Requeſt muſt be alledged, and a *licet ſæpius requiſitus* will not ſerve. *Cro. Jac.* 523. *pl.* 8.

Where a ſpecial Requeſt muſt be alledged in an *Aſſumpſit.*

H **Where** an *Aſſumpſit* is to do a Thing upon a Requeſt, a ſpecial Requeſt muſt be alledged ; *aliter* if not upon Requeſt. *Lutw.* 231. See 2 *Lev.* 198.

Where the Promiſe ariſes upon the Requeſt.

I **Upon** a Promiſe to pay upon Requeſt, the Action ariſes upon the Requeſt, and not before. 1 *Lev.* 48.

A **There** is a Difference between a preſent Duty, and a Duty upon Requeſt, or any collateral Act; for where the Duty is upon Requeſt, or any collateral Act, the Requeſt there is traverſable, and a ſpecial Requeſt muſt be laid to be made ſuch a Day, at ſuch a Place: But where the Duty is upon a Contract, or upon a Bond, a *licet ſæpius requiſitus* generally is ſufficient. *Wynch Rep.* 103.

Where a ſpecial Requeſt muſt be alledged, and where a general Requeſt.

B **Note,** In all Actions on the Caſe, where a Requeſt is neceſſary, and the Plaintiff ought to alledge it, the Place of the Requeſt muſt be ſhewn. 2 *Leon.* Caſe 28.

Where a Requeſt is alledged, the Place of it muſt be ſhewn.

C **Where** the Promiſe is to do a collateral Thing upon Requeſt, there in the Declaration the Time and Place ought to be ſet down. 3 *Leon. Caſe* 252. But where it is for a meer Debt it need not. *Cro. Jac.* 183. *pl.* 1.

So where a Promiſe is to do a collateral Thing upon Requeſt.

D **Where** the Debt is before the Promiſe, a Requeſt is not neceſſary; for then a Requeſt is not any Cauſe of the Action. *Ibid.* 201.

Where the Debt is before the Promiſe, no Requeſt is neceſſary.

E **Where** a Man brings an Action on the Caſe for a Thing which was originally a Debt, the Plaintiff need not lay any Time or Place of the Requeſt, but when it is brought for a collateral Thing, there muſt be laid a Day and Place of the Requeſt. *Wynch* 2.

When a Day and Place of a Requeſt is neceſſary, and when not.

F **Where** Money is to be paid at a Day certain, there needs no ſpecial Requeſt. *Cro. Eliz.* 218. *pl.* 5.

No Requeſt when payable at a Day certain.

G **If** *A.* requeſt *B.* to take Goods, and *B.* does it, *&c.* *A.* is a Treſpaſſor. *Salk.* 409.

Treſpaſs.

H **A Condition** to do an Act at the End of ſeven Years on Requeſt, a Requeſt muſt be made on the laſt Day. *Ibid.* 585.

When Requeſt to be made.

I **Where** a Requeſt of Departure, *&c.* is neceſſary to make one a Treſpaſſor. *Ibid.* 641.

Treſpaſſor.

K **Where** it muſt be ſpecially alledged, and where *Sæpius requiſit'* is not ſufficient. 3 *Salk.* 308.

Licet ſæpius requiſit'.

L **Where** the Requeſt is to do a collateral Thing, and not to pay Money, there it muſt be averred. *Ibid.* 309.

Where to be averr'd.

M **Where** there is a precedent Duty before a Demand made, there *licet ſæpius requiſit'* is good. *Ibid.*

Licet ſæpius requiſit'.

Reſceit.

See **Dower.**

Reſceit, what.

Reſceit is where an Action is brought against Tenant for Life or Years; and he in Reverſion prays to be received to defend the Land, and plead with the Demandant; and when he comes he ought always to be ready to plead: So a Wife ſhall be received in Default of her Huſband, and a Tenant for Years to defend his Right. A

In Dower the Tenant was received to ſave his Term.

How the Execution ſhall be.

In Dower the Tenant made Default, after Default *A. B.* prayed to be received for his Term made to him before the Coverture, and he was received and his Term ſaved: And it was held that he ſhould have Judgment generally to recover Seiſin of the third Part of the Land, and the Execution ſhould be Special, that the Sheriff ſhould not ouſt the Termor. *Cro. Eliz.* 564. B

Where the Reverſioner may be received. 13 R. 2. cap. 17.

He in Reverſion may come into Court, and pray to be received in a Suit againſt his particular Tenant. C

Reſcue and Reſcous.

See { **Bailiff.**
Sheriff.

Reſcue, what.

Reſcue is where a Perſon is arreſted upon any legal Proceſs or Warrant, and other Perſons do forcibly take him out of the Cuſtody of the Perſon who arreſted him. D

A **The** Sheriff cannot return a Reſcous made upon a Special Bailiff, but it muſt be upon a known Bailiff: All Perſons living within the County are ſuppoſed to know the Sheriff's Bailiffs, and give Obedience unto them; but ſpecial Bailiffs are for the moſt part Strangers to them.

Sheriff cannot return Reſcous made on a ſpecial Bailiff.

B **The** Sheriff returns a Reſcous againſt S. and others, and the Retorn is, That *A.* being in Cuſtody of my Bailiffs, the Defendants reſcued him out of the Cuſtody of the Bailiffs; and quaſhed becauſe it ought to be out of the Cuſtody of the Sheriff. See *Raym.* 161. but ſee 1 *Lev.* 214. and 2 *Lev.* 26. *alias* 28. Retorn of Reſcue *extra cuſtodiam*, without ſaying that he was *in cuſtodia*, is ill, 1 *Lev.* 214.

Retorn of a Reſcous out of the Cuſtody of Bailiffs, quaſh'd.

C **An** Indictment for a Reſcous returned againſt one into this Court, ought not to be quaſh'd, although it be erroneous, except the Party that is indicted for it do appear perſonally in Court. (21 *Car. B. R.*) For he cannot in ſuch Caſe appear by Attorney, becauſe the Offence was criminal and Perſonal, for which he muſt anſwer in Perſon.

Indictment for a Reſcous ought not to be quaſh'd, tho' erroneous, unleſs the Party appear.

D **An** Indictment of Reſcous ought to expreſs the Place where, and the Time when the Reſcous was made, or elſe it is not good for the Incertainty of it. (*Trin.* 23 *Car. B. R.*) So that the Defendant cannot tell what Anſwer to make for himſelf, in Reſpect of the Incertainty of the Time and Place, when and where it was committed.

Indictment muſt expreſs the Place and Time.

E **An** Indictment of one that was indicted for a Reſcous, ſuppoſed to be made in the fifteenth Year of King *Charles*, was quaſh'd for its Inſufficiency; and yet the Reſcuer did not appear perſonally in Court: (contrary to the common Rule obſerved in thoſe Caſes) The Cauſe thereof ſeems to be, becauſe it was an old Indictment, and no Proceedings had been made upon it againſt the Party. *Paſch.* 24 *Car. B. R.*

Indictment quaſh'd, though the Party did not appear.

F **If** the Writ upon which the Defendant is arreſted be naught, and a Reſcue is made, there is no Remedy againſt the Reſcuers. *Note*, The Return of a Reſcue muſt be, That he was reſcued out of the Cuſtody of the Sheriff, and not of the Bailiff, though the Fact was, That he was reſcued out of the Bailiff's Cuſtody: Becauſe the Sheriff is the Officer, and the Bailiff is but his Servant. 6 *W. & M.* 1 *Lev.* 214. But a Return of a Reſcue out of the Cuſtody of the Sheriff's Bailiff hath been held good. See 2 *Lev.* 26. *b.* See Title **Bailiff.**

No Remedy againſt the Reſcuſſors, if the Writ be naught.

How the Return of the Reſcue muſt be.

Out of the Cuſtody of the Sheriff's Bailiff.

G **Not** guilty cannot be pleaded to the Sheriff's Return of a Reſcue; but it may be pleaded in an Action for the Reſcue. 1 *Keb.* 258. *pl.* 35.

Not guilty no Plea to the Sheriff's Return of a Reſcue.

What makes an Arreſt.

It is not ſufficient for a Bailiff (who hath a Warrant againſt a Man) to ſay, I arreſt you at the Suit of *A. B.* who is Plaintiff in the Writ: But the Officer muſt actually lay hold of him, or touch him, otherwiſe it is no Arreſt. *Trin. 3 Annæ.* See *Cro. Jac.* 485. *pl.* 4. 486. A

A Return by Implication, naught.

A Return of a Reſcue *extra cuſtodiam*, and ſays not that he ever was in his Cuſtody, is naught, becauſe it is only by Implication. 1 *Lev.* 214. B

An Action lies for the Plaintiff againſt the Reſcuers, not againſt the Sheriff.

The Plaintiff at whoſe Suit the Arreſt was, may upon a meſne Proceſs have his Action againſt the Reſcuers; for he hath the Loſs, and cannot have his Action againſt the Sheriff. *Cro. Jac.* 486. C

But upon a *Ca. Sa.* as well againſt the Reſcuers as the Sheriff.

An Action lies for the Plaintiff, at whoſe Suit the Party reſcued was taken upon a *Ca. Sa.* and then reſcued, as well againſt the Reſcuers as the Sheriff. *Cro. Car.* 109. *pl.* D

An Action lies for a Reſcue upon a meſne Proceſs, not upon an Execution.

In an Action for an Eſcape upon meſne Proceſs, the Defendant pleads a Reſcue: It ſhall be good here, but not upon an Execution; becauſe the Sheriff may raiſe *Poſſe Comitatus*: It was alſo held good, though it was not pleaded that the Reſcue was returned. 2 *Lev.* 144. 3 *Lev.* 46. *Cro. Jac.* 419. *pl.* 10, 11. E

Reſcue is no Return upon a *Fi. Fa.* nor *Ca. Sa.* nor *Utlagatum* after Judgment.

A Reſcue of a Coach and Harneſs returned upon a *Fi. Fa.* and upon the Appearance of the Parties, the Return was quaſh'd, and they were diſcharged, becauſe not good upon a *Fi. Fa.* *Show. Rep.* 180. Nor *Ca. Sa.* nor *Capias Utlagatum* after Judgment. F

Where a Sheriff may raiſe a *Poſſe Comitatus*.

The Sheriff by the Statute of *Weſtm.* 2. *cap.* 39. may raiſe *Poſſe Comitatus* to execute a Proceſs; and ſaith the Book of 3 *H.* 7. *fol.* 10. ſo may the Bailiff likewiſe, becauſe he is *in loco Vicecomitis*. G

Indictment for a Reſcue is good without *Vi & Armis*, and why.

Upon an Indictment for a Reſcue it wanted the Words *Vi & Armis*, and yet held good, becauſe the Word *reſcuſſit* implies it to be done with Force. *Cro. Jac.* 345. *pl.* 12. H

It was moved, That there was no Place mentioned where the Reſcue was made, and yet held good, and why.

Upon an Indictment for a Reſcue it was moved, that the Place where the Reſcue was made, was not expreſſed. *Curia*, It ſhall be intended where the Arreſt was made. *Cro. Jac.* 345. *pl.* 12. I

Ceperunt & reſcuſſerunt, and ſays not, *quilibet eorum*.

The Return was *quod adtunc e cuſtodia ballivi ceperunt & reſcuſſerunt*, and doth not ſay, *& quilibet eorum reſcuſſit*. *Sed per Curiam*, It ſhall be intended that all of them did it. 2 *Keb.* 436. *pl.* 81. K

A. B. ſimul cum reſcued, it is good only againſt *A. B.*

A. B. was indicted, for that he *ſimul cum C. D. E. F.* and divers others committed a Riot, and reſcued a Priſoner. *Et per Curiam*, This is void as to the Riot; for all the reſt are but one. L

It was not ſaid, that he reſcued himſelf, and held to be naught.

Alſo it was not ſaid, that he reſcued himſelf, and therefore quaſh'd. 2 *Keb.* 471. *pl.* 36. M

A **Attachment** for a Reſcue is never granted upon Affidavits. *Salk.* 586.

Attachment.

B **But** a Reſcuer may be diſcharged on Affidavits. *Ibid.*

Reſcuers.

C **The** Fine for a Reſcue is four Nobles on each Offender. *Ibid.*

Fine.

D **A Return** that the Bailiffs had him in Cuſtody of the Sheriff, and that *A.* reſcued him out of the Cuſtody of the Bailiffs is ill for Repugnancy. *Ibid.*

Return repugnant.

E **The** Sheriff's Return of a Reſcous ſhall not be traverſed. *Comber.* 295.

Traverſe.

F **See** a Motion for a Sheriff to return his Writ, and what done therein. *Carth.* 12, 141.

Return.

G **The** Sheriff's Return cannot be falſified by Affidavits. *Carth.* 255.

Return not to be falſified.

H **Where** an ill Return ſhall be aided by Appearance, *& contra.* *Ibid.* 293, 294.

I **In** Reſcous, *&c.* an Attachment is not to be granted till Return of the Writ. *Mod. Caſes in Law and Equity* 110, 342.

Attachment.

K **An** Attachment againſt divers for reſcuing one taken on an Eſcape Warrant. *Ibid.* 241.

Eſcape Warrant.

L **In** an Indictment for a Reſcue the whole Proceedings, *viz.* the *Fi. Fa. &c.* are to be ſet forth at large. *Ibid.* 357.

Indictment.

M **Where** the Diſtreſs was unlawful the Owner may reſcue before the Impounding but not after. 3 *Salk.* 310.

Diſtreſs.

Reſervation.

See { Debt.
Exception.
Heir.
Rent.

N **Reſervation comes from the Latin Word** Reſervare; **as when a Man leaſes his Lands, he reſerveth or provideth for himſelf a Rent for his own Livelihood; and ſometimes it hath the Force of a Saving or Excepting.** Co. Litt. 143. a.

Reſervation, what.

It

Leſſee for Years aſſigns his Term, reſerving a Rent; the Reſervation is void.

A **If** the Leſſee for Years aſſign over all his Term to another, and reſerve a Rent, the Reſervation is void. (*Paſch.* 24 *Car. B. R.*) For by the Aſſignment of the whole Term he hath no Intereſt in the Thing let, for the which he can challenge any Rent to be due, and the Rent muſt be due for ſome Intereſt that the Aſſignor hath left in him in the Thing aſſigned, notwithſtanding the Aſſignment; which cannot be here, becauſe he hath ouſted himſelf of the whole, and ſo there is Privity betwixt him and the Aſſignee.

Reſervation by one ſeiſed in Fee, to Leſſor, his Executors, *&c.* Plaintiff declared as Heir, and good on Demurrer.

B **Where** the Reſervation by one ſeiſed in Fee was made to the Leſſor, his Executors, Adminiſtrators and Aſſigns; yet the Plaintiff declared as Heir: And good on Demurrer; for it being during the Term, ſhall run with the Reverſion. *Raym.* 213.

Of a Journey to be performed yearly, intended only during the Term.

C **A Reſervation** of a Journey upon a Demiſe, to be performed yearly, is only intended during the Term. 2 *Saund.* 168.

Leſſee holds over; Leſſor cannot diſtrein before the Term be expired.

D **Where** Leſſee for Years holds over his Term, the Leſſor cannot diſtrein his Cattle for Rent due before his Term expired, becauſe the Term is expired, and there is no Reverſion in Being; and no Perſon ſhall diſtrein for Rent but he that hath a Reverſion; but the Leſſor may enter and diſtrein the Cattle of the Tenant at Sufferance Damage Feaſant.

The five Things to be obſerved in Reſervations of Rent.

E **To** every Reſervation of Rent there are five Things conſiderable:

1. **The** Rent reſerved.
2. **The** Place of Payment.
3. **The** Continuance of the Payment.
4. **The** Perſons to whom payable.
5. **The** Time of Payment. *Latch.* 264.

Tenant in Fee leaſes for Years, reſerving to himſelf, his Executors or Aſſigns, the Heir ſhall have Debt, and why.

F **A Reſervation** of Rent by a Tenant in Fee, to himſelf, his Executors or Aſſigns, upon a Leaſe for Years; the Heir ſhall have Debt, upon the apparent Intent that the Rent ſhall continue after the Leſſor's Death; eſpecially if there be the Words, *during the Term.* 2 *Lev.* 13, 14. 2 *Leon. Caſe* 271. *Hob.* 130. See 12 *Rep.* 36. *Contra*, if only Aſſigns. See *Latch* 44, 49, 255, 264. 2 *Saund.* 361, *&c.*

A **A Parſon** made a Leaſe, rendring Rent at *Michaelmas*, or within a Month after; the Parſon dies ten Days after *Michaelmas*, the Executor ſhall not have this Rent, becauſe it was not due: But in Caſe of a Lay Perſon, the Heir ſhall have it. *Cro. Eliz.* 575. *pl*, 19. See *Cro. Jac.* 288, 233. 10 *Rep.* 128. *b.* *Cro. Jac.* 309. *pl.* 9.

Rent reſerved by a Parſon at *Michaelmas*, or within a Month after; the Parſon dies ten Days after *Michaelmas*, his Executor ſhall not have the Rent.

Aliter, in caſe of a Lay Perſon.

B **Upon** a Power to make Leaſes at the ancient Rent, if the Reſervation be to the Leſſor, and to every Perſon to whom the Inheritance or Reverſion of the Premiſſes ſhall come, it is good. 8 *Rep.* 71. *a.*

Reſervation to whom the Inheritance ſhall come, is good.

C **The** proper Place for a Reſervation is to come after the Limitation of all the Eſtates. 10 *Rep.* 106. *a. b.* 107. *a.*

The proper Place for a Reſervation.

D **Rent** reſerved payable at *Michaelmas* and *Ladyday*, or within three Weeks afterwards, the Rent is not due, neither can it be ſued for until the three Weeks be paſt. 10 *Rep.* from 107. *a.* to 129.

Rent payable at *Michaelmas*, or twenty Days after, not due till the twenty Days are paſt.

Reſignation, See **Simony**.

Reſtitution and Re-reſtitution.

See { **Reverſal.**
Sci. Fa.

E **Reſtitution is a Writ which lies where a Judgment is reverſed by Writ of Error; and the Court which reverſes the Judgment, gives upon the Reverſal a Judgment for Reſtitution: Which ſee Title** Reverſal, **and Title** Sci. Fa. **For** Note, a Sci. Fa. Quare reſtitutionem habere non debet, **reciting the Reverſal of the Judgment, and the Writ of Execution, and Return thereof filed, muſt iſſue forth.**

Reſtitution, what.

The Court will grant no Reſtitution on Suggeſtion of the Inſufficiency of the Indictment of Forcible Entry, till the *Certiorari* to remove it be returned and filed.

A **No** Reſtitution is to be granted by the Court upon a Suggeſtion of the Inſufficiency of an Indictment of Forcible Entry or other Matter, until the *Certiorari* granted to remove the Indictment into this Court be returned and filed. (*Mich.* 22 *Car. B. R.*) For before the Return and filing of it, the Court hath nothing before them upon Record to judge upon.

Where an Indictment of Forcible Entry is quaſh'd, the Court will grant a Re-reſtitution.

B **Where** an Indictment of Forcible Entry is quaſh'd, the Court upon Motion doth uſually grant the Party indicted a Writ of Re-reſtitution, to reſtore him to the Poſſeſſion of the Land; yet the Court may (if they pleaſe) ſettle the Poſſeſſion of the Land in Queſtion, according to their own Diſcretions, *viz.* where they ſhall conceive the moſt Right to be for the Poſſeſſion. (*Mich.* 22 *Car. B. R.*) And they do uſually make Rules accordingly.

Where it ought not to be granted of the Poſſeſſion of Lands.

C **There** ought to be no Reſtitution or Re-reſtitution granted of the Poſſeſſion of Lands, where it cannot be grounded upon ſome Matter of Record appearing to the Court. *Hill.* 22 *Car. B. R.*

Reſtitution is of Duty, Re-reſtitution of Grace.

D **That** Reſtitution is of Duty, but Re-reſtitution is of Grace. *Raym.* 85.

It lies to reſtore one to the Place of Common Council in *London*, &c. if illegally diſplaced.

E **A Writ** of Reſtitution or *Mandamus* lies to reſtore one to the Place of one of the Common Council of *London*, or to the Place of a Conſtable, if he be illegally put out of ſuch a Place. (*Trin.* 22 *Car. B. R.*) Or to a Churchwarden's Place, or to a Recorder's or Town-Clerk's Place, and generally to any publick Office, or Place of Profit, Dignity or Truſt; but not to a private Office or Place which concerns not the Commonwealth; but there the Party injured is put to his Action at Law for the Recovery thereof.

The Effect of the Words *remiſit* and *relaxavit* in a Charter of Pardon.

F **The** Words *remiſit* and *relaxavit* expreſſed in a Charter of Pardon granted by the King unto one for a Felony committed by him, do not reſtore him unto his Goods which he forfeited unto the King by being convicted of the Felony; but there ought to be the Word *reſtituit*, which doth properly, and in its genuine Signification, import a Reſtitution to a Thing which he formerly had, but then hath not; whereas the Words *remiſit* and *relaxavit* do properly ſignify the remitting or releaſing of the Claim which one hath to a Thing which is in his Poſſeſſion to whom the Releaſe is made. (*Trin.* 23 *Car. B. R.*) See Title **Pardon.**

What is the Nature of this Writ.

G **The** proper Nature of a Writ of Reſtitution is, to reſtore the Party unto the Poſſeſſion of a Freehold, or other Matter of Profit from which he is illegally moved. (*Trin.* 23 *Car. B. R.*) Yet this doth not generally hold; for one may have a Writ of Reſtitution in ſome Caſes to be reſtored to a Place of no Profit, as is before expreſſed, *viz.* to an Office of Dignity or publick Truſt.

A **The** Law doth oftentimes reſtore the Poſſeſſion to one without a Writ of Reſtitution; *to wit*, by a Writ of *Habere facias poſſeſſionem*, and otherways, in common Courſe and Proceedings of Juſtice. (*Trin.* 23 *Car. B. R.*) Upon a Trial at Law.

The Law often reſtores the Poſſeſſion without this Writ.

B **A Writ** of Reſtitution is not properly to be granted, but in ſuch Caſes where the Party cannot be reſtored by an ordinary Way of Juſtice or Courſe of Law, and many Times ſuch Caſes do happen. (*Trin.* 23 *Car. B. R.*) For where ordinary Remedies may be had, extraordinary are not to be reſorted unto.

In what Caſes it is proper to be granted.

C **If** one be indicted for a forcible Entry, and the Party indicted do traverſe the Indictment, he cannot have Reſtitution granted unto him before a Trial, and a Verdict and Judgment alſo given for him, although the Indictment be erroneous. (*Mich.* 23 *Car. B. R.* and *Mich.* 24 *Car. B. R.*) For it is too late to move to quaſh the Indictment after he hath taken his Traverſe; and ſo the Indictment muſt ſtand good againſt him till the Trial, and the Right be determined in an ordinary Way of Trial, which he hath by his Traverſe put himſelf upon.

Indictment of Forcible Entry traverſed; the Party cannot have Reſtitution before Trial.

D **The** Juſtices of Peace before whom an Indictment of Forcible Entry is found, muſt give the Party Reſtitution, who was put out of Poſſeſſion by Force, for they have beſt Conuſance of the Matter, and not other Juſtices of Peace of the County; but the Judges of this Court may grant a Writ of Reſtitution, though the Indictment was not found before them. (*Hill.* 23 *Car. B. R.*) For they have a ſuperintendent Power over all *England*, and have Power to examine the Forms in Court, and to make Rules according to Juſtice, *viz.* If the Indictment be removed into this Court.

The Juſtices before whom the Indictment was found, muſt give the Party Reſtitution.

Not other Juſtices: But Judge of *B. R.* may.

E **Where** Money is levied upon a *Fi. Fa.* upon an erroneous Judgment, which Judgment is afterwards reverſed in this Court by Writ of Error, and Judgment given thereupon, that the Party ſhall have Reſtitution, the Perſon whoſe Goods were levied in Execution muſt procure the *Fi. Fa.* with the Return of the Goods thereupon levied to be filed, and thereupon he muſt ſue out a *Sci. Fa. quare reſtitutionem habere non debet.* The Reaſon why he cannot ſue a Writ of Reſtitution upon the Judgment, *quod judicium revocetur* is, becauſe it doth not appear upon Record until Judgment upon a *Sci. Fa.* that there was any Execution had, or Money levied upon any Execution upon the erroneous Judgment.

Money levied on a *Fi. Fa.* on an erroneous Judgment, which is afterwards reverſed; what the Party muſt do to have Reſtitution.

F **No** Reſtitution for Goods taken upon an erroneous Execution, for which Damages had already been recovered, in an Action of Treſpaſs. *Raym.* 74.

No Reſtitution for Goods taken on an erroneous Execution, for which Damages had been recovered in Treſpaſs.

Where one indicted for a Forcible Entry may have a Writ of Reſtitution.

A There may a Writ of Reſtitution be granted to one that ſtands indicted for a Forcible Entry after he hath traverſed the Indictment and before the Trial, if there do appear to be apparent Delay in the Proceeding of the Defendant upon the Traverſe; elſe not, as is aforeſaid. (*Trin.* 24 *Car. B. R.*) And if it ſhould not be ſo, it might prove miſchievous to the Party concerned.

No Writ of Re-reſtitution, where there has not been one of Reſtitution before.

B There cannot be a Writ of Re-reſtitution granted, where there doth not appear to have been a Writ of Reſtitution formerly granted in the Caſe. (*Mich.* 1650. *B. S.*) For the very Word Re-reſtitution doth imply, that there was a Writ of Reſtitution formerly granted, and an ouſting of the Party ſince the Writ of Reſtitution executed.

A Re-reſtitution may be granted if the Court ſee Cauſe.

C A Writ of Re-reſtitution may be granted upon a Motion for it, if the Court ſee Cauſe to grant it. By *Aſk* Juſtice. *Paſch.* 1650. *B. S.* 2 *Maii.*

If one indicted of Forcible Entry do neither traverſe nor plead, the Party may be reſtored to his Poſſeſſion.

D Upon an Indictment of Forcible Entry found againſt the Party, if he do neither traverſe nor plead to the Indictment, the Party out of Poſſeſſion may be reſtored to his Poſſeſſion upon moving the Court. *Paſch.* 1650. *B. S.* 22 *Maii.*

The Court ſhall grant Reſtitution after the Attainder of the Felon. 21 H. 8. cap. 11.

E There ſhall be Reſtitution granted to the Owner of ſtolen Goods, by the Court where the Felon is tried, after the Attainder of the Felon. 21 *H.* 8. *cap.* 21.

Reſtitution awarded upon a *Vi laica amovenda.*

F A Reſtitution was awarded to one who was put out of Poſſeſſion by the Sheriff upon a *Vi laica amovenda.* *Cro. Eliz.* 466. *pl.* 13. 5 *Mod.* 443, 444.

How Reſtitution ſhall be upon a *Fi. Fa.* and how upon an *Elegit*, where a Term is taken in Execution.

G Where a Leaſe is taken in Execution upon a *Fi. Fa.* and ſold by the Sheriff, afterwards the Judgment is reverſed, the Reſtitution muſt be of the Money for which it was ſold, and not of the Term; but in Caſe of an *Elegit* it muſt be of the Term itſelf. *Moor*, Caſe 788. *Cro. Jac.* 246. *pl.* 3.

How the Reſtitution ſhall be in a Judgment in Ejectment.

H In an Ejectment after Judgment reverſed, there muſt go a Writ to enquire what were the Profits of the Land that the Plaintiff in the Judgment had *colore inde* taken after the Judgment; for he is to be reſtored to all that he loſt by Occaſion of that Judgment. *Cro. Jac.* 698.

Formerly Payment was no Plea to a *Sci. Fa. Quare reſtitutionem, &c.* But now ſee the Statute of 4 & 5 Ann.

I In a *Sci. Fa. Quare reſtitutionem, &c.* the Defendant pleaded Payment of the Money mentioned in the *Sci. Fa.* It was then held to be no Plea. *Cro. Car.* 328. *pl.* 22. 329. But now by a Statute made 4 & 5 *Annæ*, Payment is a good Plea to a *Sci. Fa.*

A **Where** a Judgment for Land is reverſed in this Court by Writ of Error, the Court may grant a Writ of Reſtitution to the Sheriff to put the Party in Poſſeſſion of the Land recovered from him by the erroneous Judgment: For Part of the Reverſal of an erroneous Judgment is, That the Party againſt whom the Judgment was given, be reſtored to all that he hath loſt by the Judgment; which Reſtitution is to be made by the Sheriff upon a Writ for that Purpoſe directed to him.

Who muſt give Reſtitution upon a Judgment reverſed for Error.

B **Execution** was ſued out after a Writ of Error brought, and Bail put in; but there was no Notice thereof given to the Plaintiff's Attorney, but yet adjudged void: But the Attorney having no Notice of the Writ of Error, was not in Contempt; and a Writ of Reſtitution was awarded, without Payment of Coſts on either Side. 3 *Lev.* 312, 313.

Execution ſued out and executed after a Writ of Error allowed, and Bail put in, but no Notice thereof given to the Attorney.

C **Upon** a *Sci. Fa. Quare reſtitutio non*, the Defendant appears and pleads, That he never was poſſeſſed of the Money mentioned in the Writ, *Et de hoc ponit ſe ſuper patriam*, and held naught; becauſe he doth not ſay, *Nec de aliqua inde parcella*, and alſo hath concluded to the Country; whereas he ought to have averred his Plea, with an *hoc paratus eſt verificare*. *Mich.* 1 *Jac.* 2. *B. R.*

What is a good Plea to a *Sci. Fa. Quare reſtitutio non.*

D **Reſtitution** of Poſſeſſion upon the Statute of 8 *H.* 6. *cap.* 9. of Forcible Entry muſt always be made to him in the Reverſion, and not to the Leſſee for Years; for he who is diſſeiſed ſhall be reſtored, and then the Leſſee may re-enter. 1 *Leon.* Caſe 461.

Reſtitution muſt be made to the Reverſioner, not to the Leſſee. 8 H. 6. cap. 9.

E **Judges** and Juſtices in Caſe of Forcible Entries may give the like Reſtitution to Tenant for Years by Copy of Court Roll, by *Elegit* and Statute, as to Tenant of the Freehold. 21 *Jac.* 1. *cap.* 15.

Tenant for Years, *&c.* ſhall have Reſtitution as well as Tenant of the Freehold.

F **A Writ** of Reſtitution lies not againſt any that are not Parties to the Record. *Salk.* 589.

For whom it lies.

G **Where** Money recovered in a Judgment appears by Record to be paid, Reſtitution ſhall be *ſans Scire facias*. *Ibid.* 588.

Reſtitution without a *Sci. Fa.*

H **But** otherwiſe where it appears to be only levied. *Ibid.*

I **So** where Judgment is ſet aſide after Execution for Irregularity, there needs no *Scire facias* for Reſtitution. *Ibid.*

The like.

K **Where** Reſtitution was denied upon quaſhing an Inquiſition of forcible Entry, a Leaſe for Years ſtanding out. *Ibid.*

Forcible Entry.

L **A Traverſe** to an Inquiſition of forcible Entry is a *Superſedeas* to the Reſtitution. *Salk.* 588.

The like.

Forcible Entry.

A Where it muſt be awarded immediately upon a Forcible Entry. *Carthew* 497.

The like.

B Reſtitution made above three Years after the Inquiſition taken of the Force, is ill, becauſe the Statute intends a ſpeedy Remedy. 3 *Salk.* 313.

Where *Ex gratia.*

C Goods imported contrary to the Act of Navigation, were ſeiſed, and afterwards the Property was claimed by another; in ſuch Caſe a Writ of Reſtitution is *Ex gratia*, and not *Ex debito Juſtitiæ*. *Ibid.*

Retorno Habendo, See { Property. Replevin.

Retraxit.

See Nolle Proſequi.

Retraxit, what.

D A Retraxit is where the Party, Plaintiff or Defendant, comes into Court in proper Perſon where his Cauſe is depending, and ſays, That he will not proceed any further in his Cauſe. Now this is a Bar to the Action for ever.

A *Retraxit* cannot be before a Declaration.

E A *Retraxit* cannot be before a Declaration; for before a Declaration it ſhall be but a Nonſuit, and not a *Retraxit*. *Dal.* 78. *pl.* 10. 3 *Leon.* Caſe 47.

It muſt be in Perſon, not by Attorney.

F Where the Plaintiff comes into Court in Perſon, *& fatetur ſe ulterius nolle proſequi*, this is a Bar for ever; but if it be by Attorney, and not in Perſon, it is no Bar. *Cro. Jac.* 211. *pl.* 3. 8 *Rep.* 58. *a.*

G The Difference between a *Retraxit* and a Nonſuit. 3 *Salk.* 224.

Return of Writs.

See { Execution. Fi. Fa. Jury. Sheriff. Writs.

A Return of Writs is where a Writ is executed, or that the Defendant cannot be found, &c. then this Matter is endorſed on the Back of the Writ by the Officer, and delivered into the Court at the Day of the Return thereof, to be filed.

Return of Writs, what.

B The Court was moved, that a Return made upon a *Habeas Corpus* might be amended before it was filed, and it was granted. (*Hill.* 21 *Car. B. R.*) But after it is filed it cannot be amended, for then it is a Record of the Court.

Return of a *Habeas Corpus* amended before it was filed.

C If an inferior Court do make an ill Return of a *Habeas Corpus*, the Court will grant an *alias Habeas Corpus*, and alſo ſet an Amercement upon them for making an ill Return of the former *Habeas Corpus*. (*Hill.* 21 *Car. B. R.*) Becauſe thereby, *viz.* by the ill Return, Juſtice is delayed; and the Party grieved is alſo put to more Trouble and Charge to obtain the *alias Habeas Corpus*.

If an inferior Court make an ill Return of a *Habeas Corpus*, the Court will grant an *alias*, and amerce them.

D If a Writ out of this Court be directed to an inferior Court, which the inferior Court is not bound to allow, but may proceed notwithſtanding the Writ ſent unto them; yet they ought to make a Return upon the Writ, and in the Return to ſhew the Cauſe why they do not allow the Writ, but do proceed in the Cauſe notwithſtanding the Writ. (*Hill.* 22 *Car. B. R.*) For the Writs of this Court are to be obeyed, if there be not very good Reaſon ſhewed to the contrary why they ought not to be obeyed; and therefore there muſt be a Return made, elſe the Court will ſuppoſe their Authority is ſlighted.

Inferior Court muſt ſhew Cauſe why they do not allow a Writ upon the Return of it; tho' they do proceed in the Cauſe.

A Priſoner may have a Copy of the Return of his *Habeas Corpus.*

A Priſoner brought to the Bar, upon the Return A of the *Habeas Corpus* may have a Copy of the Return, if he prays it, that he may take his Exceptions to the Return. (*Mich.* 22 *Car. B. R.*) But the Return muſt be firſt filed, for before it be filed it is not a Record of the Court, and it may be amended.

If the Under-Sheriff may be juſtly challeng'd as partial, the Court will order the High Sheriff to return the Jury.

If the Under-Sheriff of a County may be juſtly B challenged as partial to the Plaintiff or the Defendant, in reſpect of Kindred or Alliance, or ſome other Cauſe that may render him not to be indifferent between the Parties, and he be to execute a *Venire fac.* to ſummon a Jury to try an Iſſue joined betwixt the Plaintiff and Defendant; in ſuch Caſes the Court will upon Motion of the Party that is likely to be prejudiced if a Jury ſhould be returned by him, order that the High Sheriff of the County ſhall himſelf return the Jury. (*Mich.* 22 *Car. B. R.*) But *vice verſa*, they will not do it, but direct the Coroner to do it. See after.

If the Sheriff take Bond for Appearance, he muſt not return a *Non eſt Inventus*; if he do, Caſe lies againſt him for making a falſe Return.

If one be arreſted by the Sheriff's Bailiff, and a C Bond be given unto the Sheriff, that the Party arreſted ſhall appear at the Return of the Writ; the Sheriff ought not to return a *Non eſt inventus*, but a *Cepi Corpus*; and if he do return a *Non eſt inventus*, the Plaintiff may bring an Action upon the Caſe againſt the Sheriff for making a falſe Return; and if the Sheriff do return a *Cepi Corpus*, and yet the Party arreſted doth not appear at the Day, the Court will increaſe Amercements upon the Sheriff until he make the Party to appear. (*Hill.* 22 *Car. B. R.*) For when the Party is arreſted, he is in Cuſtody of the Sheriff, and he ought to keep him at his Peril, and bring him in at the Day; and it is of Favour to the Party that he takes Bond of him for his Appearance, for he is not bound to do it: And if he ſuffer by it, he may take his Remedy againſt the Party upon the Bond.

In all Returns the Sheriff muſt inſert his Title, &c.

It is requiſite that the Sheriff in making a Re- D turn ſhould inſert his Title, Name of Dignity, Chriſtian and Surname. (*Hill.* 22 *Car. B. R.*) Becauſe it is the Courſe uſed by all Sheriffs upon Returns to all Courts; and ancient Uſages and Cuſtoms ought to be obſerved in Practice.

In what Caſe an *Habeas Corpus licet languidus* ſhall iſſue.

If the Sheriff return a *Cepi Corpus*, and the Party E arreſted is ſick and doth not appear, there may a *Habeas Corpus licet languidus* iſſue out of this Court to bring the Party in, notwithſtanding his Sickneſs. (*Hill.* 22 *Car. B. R.*). So that the Party is not excuſed from obeying the Law, though the Hand of God be upon him; for the Law regards publick Juſtice more than the private Good and Welfare of any particular Perſon, yea of many particular Perſons, although it be alſo tender of the Perſons of all.

If a Man be returned Tenant, he cannot contradict the Return.

If the Sheriff return that one is Tenant, he can- F not contradict the Return of the Sheriff. 1 *Lev.* 67.

A **If** a *Ca. Sa.* be awarded and left with the Sheriff four Days or more before the Return is out, (which it muſt be by the Rules of the Court, otherwiſe it is void) and the Party die before the Return of it, it may be avoided by Pleading, and the Bail of the dead Perſon ſhall be diſcharged. (*Hill.* 22 *Car. B. R.*) *Quære*, and ſee **Bail**.

If a *Ca. Sa.* be awarded and left with the Sheriff, and the Party die before the Return, his Bail ſhall be diſcharged.

B **If** a Writ be returned by a Perſon to whom it was not directed, the Return is not good, it being the ſame as if there were no Return at all upon it. (*Hill.* 22 *Car. B. R.*) For Proceſſes of Law are to be executed by ſuch Perſons only as the Law directs them to, and takes Notice of, as publick Miniſters, who are accountable for their Actions, and not by private Perſons.

The Return of a Writ by a wrong Perſon is not good.

C **A Return** of the Sheriff ought not to mention the Year of the Age of the King, but the Year of the Reign of the King. (*Paſch.* 24 *Car. B. R.*) For the Sheriff and all Miniſters of Juſtice are Officers to the King as Head of the Commonwealth in his Politick Capacity, and not in his Natural Capacity as a Man, but as he is a King, which relates to the Time he began to reign, and not to the Time of his Birth.

The Sheriff ought not in a Return to mention the Year of the King's Age, but of his Reign.

D **Where** a Matter to be tried by a Jury doth concern the Title and Intereſt of the Under-Sheriff, there the Jury that is to try this Matter, is by Order of Court ſometimes (as the Court ſees Cauſe) returned by the High Sheriff, and ſometimes by the Secondary. (*Trin.* 24 *Car. B. R.*) For it is to be preſumed that the Under-Sheriff will not return an indifferent Jury, where himſelf is concerned; for every one is apt to be partial for his own Benefit.

How a Jury to be returned where the Intereſt of the Under-Sheriff is concerned.

E **It** is not neceſſary for the Sheriff to return of what *Venue* the Jury are, but only to ſay, *Nomina Jurator. inter* A. B. *Quer. &* C. D. *Def. in placito tranſgr.* A. B. *de* C. *Gen. &c.* this being the ancient and uſual Form. (*Trin.* 24 *Car. B. R.*) And old Forms are to be obſerved and not varied from, but upon ſpecial Reaſons. See in Title **Jurors** what Alteration is made now by the Statute of 4 & 5 *W. & M.*

The Sheriff need not return of what *Venue* the Jury are.

F **It** is not neceſſary that the Return of a *Habeas Corpus*, or a Return made by Commiſſioners of Sewers, ſhould be ſo formal and punctual as a Plea ought to be. (*Paſch.* 24 *Car. B. R. Mich.* 1649.) For there is not ſo much Prejudice to any one by their Informality as may be by informal and ill Pleading; neither are ſuch Returns made by ſo learned Men as Pleadings are; and therefore the Court expects not that they ſhould be ſo curious in framing of them, but will accept of them for good, if they be good in the Subſtance of them, and to a common Intent.

Return of an *Habeas Corpus*, or of Commiſſioners of Sewers, need not be ſo punctual as a Plea.

Return of an *Habeas Corpus* muſt be in Parchment.

A **A Return** of an *Habeas Corpus* ought to be written in Parchment, and not in Paper, it being to be filed and made a Record, for all Records muſt be in Parchment only; and if it be made in Paper, the Court will not accept of it. (*Mich.* 22 *Car. B. R. Paſch.* 1650.) Parchment will continue to Poſterity, which Paper will not ſo well do.

Upon an *Habeas Corpus cum cauſa*, an inferior Court muſt return the Body and all the Cauſes depending againſt him.

B **If** an *Habeas Corpus cum cauſa*, that is, a *Habeas Corpus* to remove the Body of the Party, and of his Cauſe depending, be directed to an inferior Court, they ought to return the Body and all the Cauſes that are there depending againſt him at that Time, and it is not ſufficient to return one or ſome of the Cauſes only. (*Mich.* 24 *Car. B. R.*) For the Word *cauſa* is there taken for *nomen collectivum*, comprehending more than one; for all the Cauſes make but one as to detaining the Party in Priſon; and if they omit the returning any one of the Cauſes, it is an Eſcape in the Priſon-Keeper. See before **Habeas Corpus.**

Proceedings in criminal Matters, &c. not helped after Verdict by the Statute of *Jeofails*.

C **In** criminal Matters, nor Actions *qui tam* upon penal Statutes, nor in real Actions, nor Writs of Aſſize; Proceedings which are erroneous are not helped after a Verdict, by the Statute of *Jeofails*. (*Paſch.* 1651. *B. S.* 11 *Maii.*) This is in Favour of the Life and Liberty of the People which are moſt concerned in ſuch Proceedings, and are much favoured in Law, and the Statute extends not to them. See the Statutes.

Fi. Fa. well executed, though not returned.

D **The** Sheriff ſells the Goods upon a *Fi. Fa.* but doth not return his Writ, yet the Sale is good. 4 *Leon.* Caſe 44.

Upon a Writ of Seiſin for two Acres the Sheriff returns Seiſin of one, and *tarde* as to the other, it is naught.

E **An** *Habere facias ſeiſinam* was awarded to give Seiſin of two Acres; the Sheriff returns as to one Acre Seiſin given, as to the other a *tarde*. *Per Cur.* He ſhall be amerced for the Repugnancy. *Ibid.* 145.

Return of a Writ of Seiſin in Dower.

F **The** Return of a Writ of Seiſin in Dower. *Ibid.* 223.

The Sheriff's Name muſt be to the Returns of Writs.

G **The** Name of the Sheriff muſt always be to the Return of the Writ; otherwiſe it appears not how it came into Court. *Cro. Eliz.* 310. *pl.* 20.

Writ of Enquiry executed the ſame Day it was returnable, and good.

H **The** Sheriff executed a Writ of Enquiry the ſame Day it was returnable, and good. *Cro. Eliz.* 761.

How the Sheriff muſt return an Attachment.

I **The** Sheriff returned, that the Defendant was attach'd *per Catalla ad Valenciam* 10 *l.* and naught: For he ought to return by one Beaſt or Chattel certain and name them, that they may be forfeited. *Cro. Eliz.* 13. *pl.* 7.

How the Return muſt be by the old Sheriff to the new.

K **How** the Return of the Writs muſt be from the old Sheriff *in exitu ab officio*, to the new Sheriff. *Cro. Car.* 189. *pl.* 9.

A **Delays** in Suits by Reaſon of fifteen Days between the *Teſte* and Return of Writs in perſonal Actions and Ejectments remedied. 13 *Car.* 2. *c.* 2. *Sect.* 4.

Delays in Suits remedied by taking away the fifteen Days in perſonal Actions.

13 **Car.** 2. **cap.** 2. **ſect.** 4.

B **Except** a *Ca. Sa.* to the Outlawry after Judgment, and alſo to make the Bail liable.

What Writs are excepted.

C **The** Sheriff returns upon a *Fi. Fa. quod cepit diverſa Bona & Catalla* of the Defendant, and did not ſay of what Value. *Curia.* If it be returned without any Value, it ſhall be intended to be the whole Debt. *Mich.* 9 *W.*

How it ſhall be intended where the Sheriff returns *Bona & Catalla*, and no Value.

D **See** the Return of a *Habeas Corpus* for the City of *London*, upon a Suit upon a By-Law for Weiage. 1 *Lev.* 13, 14, 15.

Return of *Habeas Corpus* in *London*.

E **All** Writs of Enquiry of Damages muſt be executed and returned by a Sheriff, and not by a Bailiff of a Liberty. *Hob.* 83.

Writs of Enquiry, by whom to be executed and returned.

F **In** Dower upon a Writ of Enquiry the Sheriff returned, that the Huſband did not die ſeiſed *prout conſtare poterit*, and for that Uncertainty it was taken off from the File. 4 *Leon.* Caſe 69.

The Return of *prout conſtare poterit* is uncertain and void.

G *Attach' Feci* is good in a Return, and Surpluſage in a Return is to be rejected. *Salk.* 589.

Surpluſage.

H **Proceſs** whereon to ground a *Teſtatum* is returned by the Attorney of Courſe. *Ibid.*

Proceſs for a *Teſtatum*.

I **A Return** of a *Certiorari* by the Clerk of the Peace is ill. *Ibid.* 479.

Certiorari.

K **There** are to be eight Days between the *Teſte* and Return of a *Ca. Sa.* againſt the Principal, in order to diſcharge the Bail. *Ibid.* 599, 602.

Ca. Sa.

L **Return** to a *Mandamus* ſetting forth Articles for a Removal *ad effectum ſequentem*, is ill. *Mod. Caſes in Law and Equity*, 102.

Mandamus.

M **The** Return to a *Mandamus* may be demurred to, or traverſed, by 9 *Annæ*, *c.* 20. *Ibid.* 113.

The like.

N **See** the Return to the *Mandamus* for reſtoring Dr. *Bently* to his Degrees. *Ibid.* 151.

The like.

O **There** are to be eight Days between the *Teſte* and Return of each *Sci. Fa.* againſt Bail. *Ibid.* 31, 305.

Sci. Fa.

P **A** *Capias* againſt the Principal and *Sci. Fa.* againſt Bail held irregular, becauſe only four Days between the *Teſte* and Return. *Ibid.*

Capias and *Sci. Fa.*

Q **The** Return of a *Sci. Fa.* againſt Bail may be on a general Return, tho' the Proceedings againſt the Principal be by Bill, for it is an original Suit, *&c.* *Ibid.* 108.

Sci. Fa.

Habeas Corpus.

Where the Return of an *Habeas Corpus* is ill, for that it ſet forth a Cuſtom for the Mayor, *&c.* to commit to the Sheriff, and doth not ſay he was Sheriff. 3 *Salk.* 92. A

Officer muſt ſhew the Writ returned.

Sheriff, or other Officer, juſtifying under a returnable Writ, muſt ſhew that the Writ was returned. *Ibid.* 220. B

Reverſal.

See { **Error.**
Execution.
Judgment.
Reſtitution.

Reverſal, what.

Reverſal of a Judgment is where a Writ of Error is brought upon a Judgment, and upon the Return of the Writ it appears, that the Judgment is erroneous; then the Court gives Judgment; Quod judicium revocetur, adnulletur & penitus pro nullo habeatur; Quodque **the Plaintiff in the Errors,** ad omnia quæ occaſione judicii præd. amiſit reſtituatur. C

Reverſal of an erroneous Judgment; by whom and how pronounced.

The ancienteſt Judge in the Court, and in his Abſence the next in Seniority to him, doth always pronounce the Reverſal of an erroneous Judgment to be reverſed by Writ of Error, openly in Court, upon the Prayer of the Party; and he pronounceth it in *French* to this Effect, *Pur les errors avandit, & auters errors manifeſt in le Record, ſoit le judgment reverſe, & le defendant reſtore a tout ceo que il ad per ceo perd.* In *Engliſh* thus: ‘ For the aforeſaid ‘ Errors, and other manifeſt Errors in the Record, let the Judgment be ‘ reverſed, and the Defendant reſtored to all that which he hath loſt ‘ thereby.’ *Trin.* 22 *Car. B. R.* This Form is now out of Uſe. D

Erroneous Outlawry againſt ſeveral may be reverſed as to one, and ſtand good as to the others.

Where divers Perſons ſtand outlawed for a Forcible Entry, if the Outlawry be erroneous, it may be reverſed as to one of the Perſons outlawed, and yet ſtand good as to the others; for the Outlawries are ſeveral: But the Poſſeſſion of the Land cannot be E be reſtored until the Outlawry be reverſed in the whole. (*Hill.* 22 *Car. B. R.*) Becauſe the Force is not wholly purged.

A **The** Judge will not pronounce the Reverſal of an erroneous Judgment, though it be adjudged to be erroneous, except the Counſel for the Plaintiff in the Writ of Error do pray it may be pronounced. (*Hill.* 1649. *B. S.* 30 *Jan.*) For the Judges are only to do Juſtice to thoſe that deſire it, for their Office is to judge between Party and Party.

The Judge will not pronounce the Reverſal of an erroneous Judgment, unleſs the Counſel pray it.

B **A Judgment** in Ejectment in *Ireland* was reverſed, and Judgment given for the Plaintiff, *quod recuperet terminum ſuum præd.* And reſolved, That there ſhould be a Writ directed to the Chief Juſtice of the King's Bench in *Ireland* to reverſe that Judgment, and commanding him to award Execution. *Cro. Car.* 511. *pl.* 6.

A Judgment in Ejectment in *Ireland* reverſed here.

And how Execution to be.

C **The** Reverſal of a Judgment may be pronounced conditionally, That is, That the Judgment is reverſed, if the Defendant in the Writ of Error doth not ſhew good Cauſe to the contrary at an appointed Time: This is called a *Revocetur niſi*; and if no Cauſe be then ſhewn, it ſtands reverſed without further Motion.

How it may be reverſed conditionally.

D **The** Statute of 21 *Jac. cap.* 16. *ſect.* 4. hath provided a new Writ, where Judgment is reverſed after a Verdict, or where an Outlawry is reverſed; but not where the Plaintiff dies pending the Writ. *Lutw.* 264.

What Writs are provided by the Statute of 21 **Jac. cap.** 16. **ſect.** 4. after Judgment or Outlawries reverſed.

E **An** Outlawry was reverſed, and a Reſtitution was granted by the King of a Stock in the *Eaſt-India* Company. 2 *Lev.* 50.

A Reſtitution granted of a Stock in the *Eaſt-India* Company.

F **By** the Reverſal of an Outlawry it is as if no Outlawry had ever been, and there is no Record of it. *Cro. Eliz.* 270. *pl.* 13.

How it is upon the Reverſal of an Outlawry.

G **A Term** was ſold upon an Outlawry by the Lord Treaſurer, the Outlawry is reverſed; the Sale is void, and the Party ſhall have his Term again: But otherwiſe it is where a Term is ſold by the Sheriff upon a *Fi. Fa.* For there the Party ſhall never have his Term again, but ſhall have Reſtitution of the Money for which it was ſold. *Cro. Eliz.* 278. *pl.* 3.

A Term cannot be ſold upon an Outlawry, but it may upon a Judgment.

How Reſtitution ſhall be where there is the Sale of a Term upon a *Fi. Fa.*

H **An** *Elegit* was ſued out, and a Leaſe delivered to the Plaintiff in Satisfaction of his Debt; afterwards this *Elegit* was reverſed: And adjudged, That this Sale ſhall not bind: For there is a Difference between the Sale and Delivery to the Party himſelf upon an *Elegit*, and of a Sale to a Stranger upon a *Fi. Fa.* For the *Fi. Fa.* gives the Sheriff an Authority to ſell, and bring the Money in Court; ſo

A Leaſe is delivered to the Plaintiff upon an *Elegit*, the Judgment is reverſed, there ſhall be Reſtitution of the Term.

But in Caſe of a *Fi. Fa.* Reſtitution of the Money only.

that if the Judgment be reverſed after the Term ſold, he ſhall not be reſtored to the Term, but to the Money for which it was ſold: But upon the Sale and Delivery of the Leaſe to the Party upon an *Elegit*, which is reverſed, the Party ſhall be reſtored to the Term itſelf. *Cro. Jac.* 246. *pl.* 4.

A Leaſe ſold upon a *Fi. Fa.* Judgment reverſed, the Sale is good.

A **Leaſe** is taken in Execution upon a *Fi. Fa.* and ſold, Judgment is reverſed: The Sheriff's Sale is good, and ſhall not be avoided. 8 *Rep.* 96. *b.* 99. *a.* A

How the Judgment ſhall be entered upon a Reverſal of a Judgment againſt a Defendant.

In Debt upon Bond the Defendant pleads in Bar; the Plaintiff demurs, and Judgment for the Defendant; the Plaintiff brings Error and reverſes the Judgment; the Judgment upon the Reverſal ſhall be that the Plaintiff recover his Debt and Damages. 1 *Leon.* 33. and not that he ſhall be reſtored to his Action. So it is where a Judgment is reverſed in the Exchequer-Chamber. *Cro. Jac.* 206. *pl.* 1. B

Reverſion.

See { **Recovery.**
Remainder.

The ſeveral Significations of the Word Reverſion.

THE Word Reverſion hath two ſeveral Significations: C

The one is an Eſtate left, which continues during the particular Eſtate in Being. D

The other is the returning of the Land after the particular Eſtate is ended. Plow. Com. 160. b. E

A Reverſion, what.

A Reverſion is where the Reſidue of the Eſtate continues in him that made the particular Eſtate, and when the particular Eſtate determines, then the Reverſion comes into Poſſeſſion. See Co. Litt. 22. b. 1 Plow. 161, 162. F

Reverſion of an Eſtate-Tail in the Crown cannot be barred. 34 H. 8. cap. 20.

That an Eſtate-Tail cannot be barred where the Reverſion is in the Crown, upon the Statute of 34 *H.* 8. *cap.* 20. See *Raym.* 358. G

General

A **General** Words in an Act of Parliament do not comprehend an Eſtate-Tail. *Id.* 322,

Eſtate-Tail not comprehended in the general Words in a Statute.

B **If** Tenant in Tail of a Reverſion bargain and ſell but it to the Bargainee and his Heirs, nothing paſſes but only an Eſtate deſcendible for the Life of the ſaid Tenant in Tail. 1 *Saund.* 260, 261.

Tenant in Tail of a Reverſion ſells to Bargainee and his Heirs, what paſſes.

C **If** one have a Reverſion expectant upon a Leaſe for Years, he may make a Bargain and Sale of this Reverſion for one Year, and after make a Releaſe in Fee to the Bargainee for a Year of the Reverſion; and by this Conveyance the Reverſion in Fee will paſs to the Bargainee for a Year. (*Mich.* 1650. *B. S.*) For by this Leaſe and Releaſe all the Eſtate in the Reverſion is out of the Reverſioner and in the Bargainee.

How to paſs the Reverſion in Fee to the Bargainee for a Year.

D **He** which hath the Poſſeſſion, cannot have the Reverſion; becauſe by uniting of them, the one is drowned in the other.

He which hath the Poſſeſſion cannot have the Reverſion.

E **A Man** ſeiſed of a Reverſion after a Leaſe for Life, for Money, demiſes, grants, ſets, and to farm lets it for Ninety-nine Years from the Day of the Date, at the Rent of 40*s.* the Tenant for Life did not attorn; the Rent is payable, and the Leſſee ſhall have the Rent payable by the Tenant for Life preſently; And this ſhall paſs as a Bargain and Sale, and executes by the Statute without Inrollment, being a Chattel. 8 *Rep.* 93. *b.* 94.

A Reverſioner after a Leaſe for Life leaſes for Years.

It is good without Attornment, being a Chattel, and the Rent is payable preſently.

F **A Reverſioner** may covenant to ſtand ſeized of a Reverſion to Uſes. 11 *Rep.* 46. *b.* 47.

A Reverſioner may covenant to ſtand ſeiſed.

G **How** to plead a Grant of a Reverſion by the Statute of *Uſes.* *Lutw.* 373.

How to plead a Grant of a Reverſion.

H **How** to plead a Reverſion in Fee after an Eſtate for Years, and after an Eſtate for Life. *Ibid.* 1174.

How to plead a Reverſion in Fee after a Leaſe for Years, and after an Eſtate for Life.

I **Why** a Recovery bars him in the Reverſion. 2 *Lev.* 30.

Why a Reverſioner is barred by a Recovery.

K **A Copyholder** is attaint of Felony, the Reverſioner for Life enters, the Copyholder is pardon'd; the Forfeiture is to the Reverſioner, not to the Lord. 3 *Lev.* 94.

Where the Forfeiture of a Copyholder is to the Reverſioner, not to the Lord.

L **The** Reverſion of a Term is not aſſignable without Deed and Attornment. 3 *Lev.* 155. until the Statute of 4 & 5 *Annæ*, which takes away Attornments.

The Reverſion of a Term not aſſignable without Deed.

4 & 5 **Annæ.**

M **In** Debt upon a Leaſe for Years by the Aſſignee of the Reverſion, and doth not ſhew that it was by Deed, and without a Deed or Fine a Reverſion will not paſs; and for that Reaſon the Judgment was reverſed. *Cro. Car.* 143. *pl.* 20.

A Reverſion will not paſs without a Deed or Fine.

A Gift to his eldeſt Son, Remainder to his own right Heirs; this is a Reverſion in him, and not a Remainder, and why.

A **A Man** conveys to his Son and Heir in Tail-male, Remainder to his own right Heirs, Whether this Remainder, he having no particular Eſtate, ſhall be adjudged a Reverſion? And it was held, That it ſhould be a Reverſion; for it is the ancient Uſe in him, and was never out of him; and the Limitation here to his right Heirs is void, being no more than what the Law veſts in him. *Cro. Eliz.* 321. *pl.* 10.

Aſſignees of a Reverſion of a Copyhold is within 32 H. 8. cap. 4.

B **Aſſignees** of the Reverſion of a Copyhold ſhall take Advantage of the Covenants upon the Statute of 32 *H.* 8. *cap.* 34. 3 *Lev.* 327.

A Stewardſhip of a Court-Baron may be granted in Reverſion, but not of a Court-Leet.

C **The** Stewardſhip of Court-Barons may be granted in Reverſion, but not of Court-Leets; for Stewards of Court-Leets are judicial Officers. 2 *Lev.* 245.

A Reverſioner may bring Caſe for ſpoiling of his Trees.

D **A Reverſioner** may bring Caſe for ſpoiling of his Trees. 3 *Lev.* 209.

Covenant lies for the Grantee of the Reverſion againſt the Leſſee after Aſſignment and Acceptance.

E **Grantee** of the Reverſion ſhall have Covenant againſt the Leſſee after Aſſignment and Acceptance of Rent. *Ibid.* 233.

Grant of a Reverſion in Fee with Attornments without Conſideration, and doth not ſay to whoſe Uſe, it is void.

F **Grant** of a Reverſion in Fee and Attornment, and ſays not to whoſe Uſe the Grant was, nor any expreſs Conſideration, and therefore naught. 3 *Lev.* 233. Becauſe it ſhould have ſaid, To hold to the Grantee and his Heirs, to the only Uſe and Behoof of the Grantee and his Heirs for ever.

A Grant of a Reverſion in Fee to commence *in futuro*, is void.

G **A Grant** of a Reverſion in Fee cannot be made to veſt at a Day to come. 2 *Plow.* 483. *a.*

By what Grant a Reverſion will paſs, and by what not.

H **By** the Grant of Lands a Reverſion will paſs: But by the Grant of a Reverſion, Lands in Poſſeſſion will not paſs. 6 *Rep.* 36. 5 *Rep.* 124. 10 *Rep.* 107. *b.* *Cro. Car.* 400. *Vaugh.* 83.

How to be granted.

I **Note,** A Reverſion of an Eſtate of Inheritance may be granted by Bargain and Sale inrolled, or by Leaſe and Releaſe, and Fine, as the Caſe is. See for a Conveyance thereof in *Bridgm. Conveyances. fol.* 237, 238.

Heir of the Part of the Mother.

K *A.* ſeiſed of Lands *a parte materna* limits ſeveral Eſtates, with Remainder to the Uſe of his right Heirs, the Heir *ex parte materna* ſhall have it. *Salk.* 590.

L **For** it is the ancient Uſe, and therein no Difference between an Expreſs and Implied Uſe. *Ibid.*

Reverter where no Remainder.

M **Note,** There may be a Poſſibility or Reverter where no Remainder can be limited. *Ibid.* 231.

Privity.

A **Privity** and the ſame Right of Eſtate are both requiſite to make a Rent incident to the Reverſion. *Skinner* 62.

Where Attornment neceſſary, and where not.

B **A Fine** was levied of a Reverſion to the Plaintiff and his Heirs, to the Uſe of the Plaintiff and his Heirs; the Plaintiff declared in Covenant, and the Defendant demurred, becauſe the Plaintiff does not entitle himſelf to the Action by any Privity of Eſtate, for this being a Conveyance at Common Law an Attornment was neceſſary to make a Privity. Adjudged *ut videtur*, that this was a future Intereſt to commence after a Term *in eſſe* at the Time of making the Eſtate to the Defendant, and therefore no Attornment neceſſary or poſſible to be made by the Defendant; and that as to the Eſtate, it was ſufficiently conveyed by the Fine. *Ibid.* 387.

Attornment.

C **In** the Caſe of a Grant of a Reverſion no Eſtate paſſes till an Attornment. *Ibid.* 388.

Where the Reverſion paſſeth.

D **A** Deviſe of an Houſe to one for Life, and all his Meſſuages to another in Fee, the Reverſion of the Houſe paſſes. *Carthew* 50.

Rent.

E The Plaintiff had no Reverſion, yet an Action of Debt will lie for Rent. *Ibid.* 161.

Covenant.

F **Where** a Grantee of a Reverſion may have an Action of Covenant againſt the Leſſee after the Aſſignment of the Term and the Acceptance of the Rent by the Aſſignee. 3 *Salk.* 5.

Revocation.

See {**Repeal.** **Uſes.** **Wills.**}

Revocation, what.

G **A Revocation is a deſtroying and making void of ſome Deed or Will, which had Exiſtence until the Act of Revocation which made it void.**

How Letters of Adminiſtration may be revoked.

A **A Revocation** of Letters of Adminiſtration may be by Act of the Court without a Seal. (*Mich.* 22 *Car. B. R.*) For it is but to ſignify the Pleaſure of the Ordinary touching the Adminiſtration of the Goods of the Inteſtate; but the Letters of Adminiſtration muſt be under Seal, becauſe thereby the Adminiſtrator derives his Authority, which ought to be fortified as well as may be; and without ſuch Letters of Adminiſtration, the Law takes no Notice of him as an Adminiſtrator.

After an Attorney appears and accepts a Declaration, his Client cannot revoke his Warrant.

B **If** an Attorney appear for his Client, and accept of a Declaration, the Client cannot revoke his Warrant of Attorney, with an Intent to ſtay the Plaintiff's Proceedings. (*Mich.* 24 *Car. B. R.*) But the Court will force the Defendant to plead; and if he do not plead, will order that Judgment be entered againſt him for not pleading: But he may, upon good Cauſe ſhewn to the Court, change his Attorney, ſo as he plead by another Attorney in due Time.

A Man ought to be of a good diſpoſing Memory when he revokes his Will.

C **A Man** ought to be of a good diſpoſing Memory when he revokes his Will, as well as when he makes it. *Cro. Jac.* 497. *pl.* 3.

Condition to perform an Award, Revocation of the Power is a Forfeiture.

D **A Man** enters into a Bond for the Performance of an Award, and after by his Deed revokes the Authority given to the Arbitrators; the Revocation is good, but the Bond is forfeited: Becauſe it was a Breach of the Words of the Condition, in the not ſtanding to the Award. 8 *Rep.* 81. *a.* 82. *a.*

Where a Fine was held a good Revocation of a Power in a Deed to be revoked upon being ſealed in the Preſence of three Witneſſes.

E **A Power** to revoke by Indenture ſealed in the Preſence of three Witneſſes, a Fine was levied, and other Uſes declared; and held a good Revocation, though the Fine of itſelf was no Indenture, and could not do; nor the Deed of Uſes did not paſs the Eſtate, but both together did. 2 *Lev.* 149. *Albanie*'s Caſe; and 174. *a. Digg*'s Caſe.

See 1 *Rep.* 112. *b.*

Four Perſons are Feoffees to Uſes, with Power of Revocation; one of them dies, the Authority is determined.

F *A.* enfeoffs four Perſons to ſeveral Uſes, all which Uſes were of his Blood, with a Proviſo, that if he paid 12 *d.* at any Time to the Feoffees, the ſaid Uſes to ceaſe, and then to be to the Uſe of him and his Heirs: One of the Feoffees dies, he pays the 12 *d.* to the other three, and declares by a new Deed that his three Feoffees, for good Conſiderations expreſſed in the Deed, ſhould ſtand ſeiſed to the Uſe of himſelf for Life, and after to new Uſes: It was held a void Revocation, one of the Feoffees being dead; for it was but an Authority given to the four to do an Act; ſo that when any one of them died, the Authority is determined, and ſhall not ſurvive. *Cro. El.* 856. *pl.* 21. *Dyer* 177. *a. pl.* 32. See Title **Executors.**

What was held to be no Revocation of a Will.

G **A Will** was made, ſigned and ſealed by the Teſtator, and afterwards there was a Revocation *quoad* Part upon the ſame Paper not ſigned: And by three Judges againſt one, held to be no Revocation within the Statue of *Frauds.* 1 *Lev.* 86.

A **Alſo** if the Uſes had been well revoked, this ſecond Indenture was not ſufficient to raiſe the new Uſes; for though the Conſideration, *viz.* Blood and Affection, be ſufficient, yet he doth not covenant to raiſe them out of his own Poſſeſſion: But that his Feoffees ſhould be ſeiſed, and none but they ſhall ſtand ſeiſed, and he hath not any Feoffees; ſo that no Uſe can ariſe. 1 *Lev.* 86.

How new Uſes muſt be raiſed upon a Revocation of Uſes.

B **If** a Man hath Power to revoke an Eſtate-Tail, he cannot out of it create a Fee. 3 *Lev.* 213, 214. A Power of Revocation, whether ſufficient or no. See 10 *Rep.* 86. *a. b.*

An Eſtate in Fee cannot be created out of a Power to revoke an Eſtate-Tail.

Power of Revocation.

C **A future** Power may be releaſed, for it may be reſembled to a Condition ſubſequent, although it cannot be performed without an Act precedent. 1 *Rep.* 174. *a.*

A future Power may be releaſed.

D **A Man** covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his Wife for Life, Remainder to his Daughter in Tail, wherein is a Proviſo to revoke theſe Uſes by Writing, and to limit new: The Wife dies, *A.* marries another Wife, and by Deed, as the Proviſo, required for a Jointure for her, covenants to ſtand ſeiſed to the Uſe of himſelf and *E.* for their Lives, and after to his own right Heirs: Although there was no expreſs Signification of his Purpoſe to diſannul, *&c.* yet when he covenanted to ſtand ſeiſed to other Uſes, this enures to two Intents:

Covenant to ſtand ſeiſed to Uſes, with a Power to revoke, and limit new.

Uſes revoked without an expreſs Intent.

Limitation of an Intention.

E Firſt, **To** declare his Purpoſe to diſannul, *&c.* and by this the former Uſes do *ipſo facto* ceaſe.

F Secondly, **The** Covenant in the ſame Indenture enures to raiſe a new Uſe to himſelf, and *E.* his Wife, and the right Heirs of *A.* For his limiting of new Uſes, ſhews his Power to alter and determine the former. 10 *Rep.* 143, 144. 6 *Rep.* 33, 34.

The Deed which revokes raiſes new Uſes.

G **The** Limitation of new Uſes is good where the expreſs Power in the firſt Deed was only to revoke. *Chanc. Rep.* 242.

Limitation of new Uſes is good, where the expreſs Power in the firſt Deed was only to revoke.

H **Note,** All incident Circumſtances preſcribed by the Proviſo, as to Subſcription, Witneſſes, *&c.* muſt be obſerved. 10 *Rep.* 143, 144. 6 *Rep.* 33, 34.

All incident Circumſtances muſt be obſerved.

I **A void** Will is no Revocation of a good Will. *Show. Rep.* 89.

Void Will is no Revocation.

K **For** Revocation of Uſes, and limiting of new Uſes, ſee at large in *Digg*'s Caſe. 1 *Rep.* 173. *b.* 174.

Revocation of Uſes, and limiting new.

M **A Man** makes a Conveyance to Uſes with a Proviſo, That if he made a Conveyance of the Premiſſes in Fee-ſimple or Fee-Tail, it ſhould be a Revocation of the former Uſes: He makes a Leaſe for Years, and the next Day grants the Reverſion in Fee; the Leſſee attorned: This was held to be a good Revocation within the Proviſo. *Cro. Car.* 472. *pl.* 6.

A Proviſo in a Deed of Uſes, that if he made a Conveyance in Fee or in Tail, it ſhould be a Revocation of the Uſes.

He makes a Leaſe for Years, and grants the Reverſion in Fee; this is a Revocation.

A Power for Revocation of Uſes, and limiting of new, may be done at one Time, by one Deed. 6 *Rep.* 33, 34. 10 *Rep.* 143, 144. A

Uſes and Powers in Contingency may be revoked.

Uſes and Powers in Contingency and Poſſibility may, by the mutual Aſſent of the Parties, be revoked. 10 *Rep.* 86. *b.* B

Whether a Power executed or not.

A. makes a Feoffment to the Uſe of himſelf for Life, Remainder to *B.* in Tail, *&c.* with a Power of Revocation, by Deed, ſealed before two Witneſſes, or by Will, ſealed by one Witneſs: *A.* levies a Fine, and a Week after by Deed declares the Uſe to himſelf in Fee, whether the Power executed or extinguiſhed. *Skin.* 35, 52, 71. C

Powers of Revocation favoured in Law. *Skin.* 72. D

Of a Power to revoke Uſes.

E. M. by Leaſe and Releaſe, ſettles the Lands in Queſtion to the Uſe of himſelf in Tail-Male, Remainder to *S. M.* in Tail-Male, Remainder to *E. M.* in Tail-Male, Remainder to *E. M.* and his Heirs, with Power to revoke the Eſtate made to *S. M.* and to ſettle new Uſes the next Day, reciting, that he had limited an Eſtate to *S. M.* and his Heirs Males; he revokes the ſame, and limits it to *S. M.* and his Heirs Males, provided that he pay 1500 *l.* to his Executors; and if he fail thereof, that it ſhall be lawful for *A.* and *B.* *&c.* to enter and raiſe the ſame out of the Rents, *&c.* *E. M.* dies, leaving Iſſue one Son who had a Daughter; *S. M.* dies without Iſſue: The Brother of *S. M.* brings his Ejectment; and upon a ſpecial Verdict in *C. B.* it was adjudged for the Defendant, who was Daughter to the Son of *E. M.* and upon a Writ of Error in *B. R.* the Judgment was affirmed, though *S. M.* had not ſuch an Eſtate which was mentioned in the Revocation, the ſole Intent of *S. M.* being to charge it with 1500*l.* and after this Charge let in, and then *S. M.* ſhall have the ſame Eſtate again he had before. *Skin.* 324. E

Fine.

The Power thereof where deſtroyed by levying a Fine. *Carthew* 22. F

Will.

A ſecond Will ſhall not revoke the firſt, if the ſecond is not a good Will in Law. *Ibid.* 80. 3 *Salk.* 316. G

Revocations in Law.

Of Revocations by Act in Law, where the Power of Revocation was well purſued. *Carthew* 292. H

Revocation of a Will.

A Deviſe of Lands to *W. R.* in Fee, afterwards the Teſtator mortgaged the ſame Lands to *R. R.* in Fee; this is not a total Revocation of the Will, but only *quoad* the Lands in Mortgage, and the Deviſee ſhall have the Equity of Redemption. 3 *Salk.* 315. I

Of a Will.

Where the Revocation muſt be in Writing, operating as a Will, or declaring an Intent to revoke. *Ibid.* 306. K

Fine and Deed.

Where a Fine and Deed make a Revocation where one alone wou'd not. *Ibid.* 316. L

Revocation final.

Where a Power of Revocation is once executed, 'tis final. *Ibid.* M

Rights and Right.

A **JUS or Right in general Signification includes not only a Right for which a Writ of Right lies, but alſo any Title or Claim, either by Force of a Condition, or the like; for the which no Action is given by Law, but only an Entry.** Co. Litt. 265. a. **Where there can be preſumed to be no Remedy, there is no Right.** Vaugh. 38.

A Right, what.

Where no Remedy, no Right.

B **There** is *Jus recuperandi*, *Jus poſſidendi*, *Jus habendi*, *Jus retinendi*, and *Jus percipiendi*. 2 Plow. 487. b.

The ſeveral Sorts of Rights.

C **A Right** cannot be transferred to another. *6 Rep.* 70. *a.*

No transferring of a Right.

D **Lands** between the High-Water and Low-Water Mark belong to the Lord of the Manor next adjoining, as Part of his Manor; and he can claim by Preſcription to have Wreck or Fiſhing there.

To whom Lands between the High-Water Mark and Low-Water Mark belong.

E **In** a Writ of Right after Plea pleaded, and Iſſue joined, or Demurrer, and Day given over, if the Defendant makes Default, no Judgment final ſhall be given, but the *Petit Cape* ſhall be awarded; but a Default after Imparlance and before Plea pleaded, is *quaſi* a Departure in deſpight of Court, and therefore Judgment final ſhall be given. *Cro. Jac.* 293.

Where Judgment final ſhall be given in a Writ of Right, and where not.

Where a *Petit Cape* ſhall be awarded.

F **A Judgment** final ſhall not be given, unleſs upon a Departure in deſpight of the Court, upon a Default; the ſame after Imparlance: But where Day is given to another Term, or to another Time certain, and then the Tenant makes Default, it ſhall be otherwiſe. *Cro. Jac.* 293.

Where given upon a Departure in deſpight of Court, and where not.

G **Where** two Rights meet, the beſt is to be preferred. *Mod. Caſes in Law and Equity* 23.

Two Rights meet.

H **A Copyholder** before Admiſſion has neither *jus in re* nor *jus ad rem*, neither a Right of Poſſeſſion, nor a Right of Propriety. *Ibid.* 353.

Copyholder.

Riot.

Riot, what.

A RIot is where Three (at the leaſt) or more do ſome unlawful Act; as to beat a Man, enter upon the Poſſeſſion of another, or ſuch like unlawful Matter.

Divers Perſons aſſemble in a peaceable Manner, and do ſome riotous Act, it is a riotous aſſembling.

B If divers Perſons do aſſemble together in a peaceable Manner, and after they are ſo aſſembled, do act ſome riotous Act, this is a riotous aſſembling of them, although they did not aſſemble at the firſt in a riotous Manner, but peaceably. (*Hill.* 24 *Car. B. R.*) For the riotous Act ſhall have Relation to their aſſembling together, ſo far as to conſtrue it to be with a riotous Intent, although it doth not appear ſo at the firſt; for the Intentions of Parties are beſt interpreted by their Actions.

There muſt be three Perſons to make it a Riot.

C Two Perſons alone cannot make a Riot, but there muſt be three Perſons together at the leaſt to make a Riot. (22 *Car. B. R.*) But two Perſons may make a Conſpiracy, as well as a greater Number.

How and in what Manner Rioters ſhall be puniſhed.
2 H. 5. cap. 8.
19 H. 7. cap. 13.
13 H. 5. cap. 7.

D How and in what Manner Riots and unlawful Aſſemblies ſhall be proſecuted, and Rioters puniſh'd by Fine and Impriſonment. See the Statute of 2 *H.* 5. *cap.* 8. and alſo the Stat. of 19 *H.* 7. *cap.* 13.

Stat. 1 Geo. cap. 5. concerning Riots, *&c.* Any Perſons to the Number of Twelve unlawfully aſſembled, and being commanded to depart, if they continue together by the Space of an Hour after, ſhall be guilty of Felony without Benefit of Clergy.

E By an Act made 1 *Georgii, cap.* 5. entituled, *An Act for preventing Tumults, and for the more ſpeedy and effectual puniſhing the Rioters*, it is enacted, That if any Perſons to the Number of Twelve, being unlawfully aſſembled, after the 31ſt of *July* 1715, and required by one or more Juſtices, or by the Sheriff, *&c.* of the County, or by the Mayor, *&c.* of any City, *&c.* by Proclamation in the King's Name, to diſperſe themſelves, and depart to their Habitations, ſhall riotouſly continue together by the ſpace of an Hour after ſuch Command, then ſuch continuing together ſhall be adjudged Felony without Benefit of Clergy.

How the Juſtice, *&c.* muſt make Proclamation.

F The Juſtice, *&c.* ſhall among the Rioters, or as near as he can ſafely come, command Silence, and then ſhall openly make Proclamation in the following Words, or in Words to the like Effect.

A “ Our Sovereign Lord the King chargeth and commandeth all Perſons, being aſſembled, immediately to diſperſe themſelves, and peaceably depart to their Habitations, or to their lawful Buſineſs, upon the Pains contained in the Act made in the firſt Year of King *George*, for preventing Tumults and riotous Aſſemblies. God ſave the King.

The Form of the Proclamation.

B And every Juſtice, *&c.* within his Limits, on Notice of ſuch unlawful Aſſembly, is to reſort to the Place, and there make Proclamation.

Juſtice, *&c.* to reſort to the Place and make Proclamation.

C If ſuch Rioters, after Proclamation made, ſhall not diſperſe themſelves within one Hour, then the Juſtice, Sheriff, *&c.* and their Aſſiſtants, may ſeiſe ſuch Perſons, and carry them before a Juſtice of the Peace, in order to their being proceeded againſt according to Law: And if ſuch Rioters be kill'd or hurt, the Juſtice, *&c.* ſhall be indemnified.

Such Rioters to be ſecured in order to be proſecuted.

And if they are kill'd or hurt, the Juſtice, *&c.* to be indemnified.

D If any ſuch Perſons ſhall unlawfully demoliſh or pull down any Church or Chapel, or any Building for Religious Worſhip, certified and regiſtred according to the Act of 2 *W. & M.* or any Dwelling-Houſe, Barn, *&c.* it ſhall be adjudged Felony without Benefit of Clergy.

Such Perſons pulling down any Church, *&c.* it ſhall be adjudged Felony without Benefit of Clergy.

E If any Perſon ſhall with Force oppoſe or hurt any Perſon that ſhall begin to proclaim, whereby ſuch Proclamation ſhall not be made, they ſhall be adjudged guilty of Felony without Benefit of Clergy. And all Perſons ſo unlawfully aſſembled, to the Number of Twelve, to whom Proclamation ought to be made, if the ſame had not been hindred, ſhall, if they continue together an Hour after ſuch Let or Hindrance, knowing thereof, be guilty of Felony without Clergy.

Like Puniſhment for thoſe who hinder ſuch Proclamation to be made.

Or who continue ſo aſſembled after ſuch Hindrance.

F If after 31 *July* 1715, any Church, Chapel, *&c.* ſhall be demoliſhed wholly or in Part, and be out of any City or Town, that is either a County of itſelf, or not within any Hundred, then the Hundred ſhall yield Damages to the Perſon injured, recoverable in any Court at *Weſtminſter*, againſt any two or more of the Inhabitants; ſuch Action for Damages to any Church, *&c.* to be in the Name of the Rector, *&c.* in Truſt, and the Damages ſhall be levied on the Inhabitants, as by the Act of 27 *Eliz.* If ſuch Church, *&c.* ſhall be in any City or Town, that is either a County of itſelf, or is not within any Hundred, then ſuch Damages ſhall be recovered againſt ſuch City in Manner aforeſaid.

How Churches, *&c.* that ſhall be demoliſhed, ſhall be repaired.

G This Act ſhall be openly read at every Quarter-Seſſions, and at every Leet or Law-Day.

Act to be read at Quarter-Seſſions and Leets.

Proſecution to be in a Year. **All** Proſecutions on this Act ſhall be commenced in twelve Months after the Offence committed. A

What neceſſary to make a Riot. **Both** an unlawful Aſſembly and an unlawful Act done, are neceſſary to make a Riot. *Vide Salk.* 594. B

What no Riot. *Ergo*, If three or more aſſemble lawfully, tho' they quarrel and fall upon one of their Company, 'tis no Riot. *Salk.* 595. C

What is. **Yet** in that Caſe if they fall upon a Stranger, 'tis a Riot, but in thoſe only who concur. *Ibid.* D

Acquittal. **Upon** an Indictment for a Riot and an Aſſault, an Acquittal of the Riot is alſo an Acquittal of the Aſſault. *Ibid.* 593. E

Inquiſition. **To** an Inquiſition of a Riot upon View, the Sheriff muſt be Party. *Ibid.* 3 *Salk.* 317. F

The like. **But** If the Rioters diſperſe before the View, the Juſtices may make the Inquiſition without him. *Ibid.* G

The like. **And** ſuch Inquiſition by two Juſtices, *Capt' pro Domino Rege* is well, and need not be *pro Domino Rege & corpore com'*. *Ibid.* H

Grand Jury. **Yet** all Inquiſitions by Grand Juries, are to be *pro corpore com'*, as well as *pro Domino Rege*. *Ibid.* I

Juſtices Inquiry. **Juſtices** not inquiring within the Month, are puniſhable, yet they may inquire after. *Ibid.* K

Murder. **If** ſeveral make a Riot, and a Man is killed, they are all Principals in the Murder. *Salk.* 334, 335. L

What may be a Riot. **Where** upon a lawful Meeting Acts of Violence enſue, this may be a Riot. *Skin.* 119. M

How many to make a Riot. **There** muſt be more than two to make a Riot, yet one only may be indicted. *Comberb.* 19. N

Whether the Sheriff to be preſent. **The** Sheriff need not be preſent at the Inquiſition of a Riot, except it be on his own View, and the Inquiſition good, tho' after the Month. *Comberb.* 423. *Carthew* 383. O

Conviction. **How** a Conviction thereof is to be made, either on the View or Inquiſition. *Comberb.* 173. P

Indictment. **An** Indictment againſt *W. R. cum multis aliis*, is good. 3 *Salk.* 317. Q

Robbery, See { **Felony.** / **Hue and Cry.** / **Sunday.**

Rolls.

A **Rolls are Parchments upon which all the Pleadings, Memorials, and Acts of Courts, are fairly entred and filed with the proper Officers, and then they become Records of the Court.**

Rolls, what.

B **If** a Writ of Error be brought to reverſe a Judgment, it is neceſſary to mark the Roll, with the Word *Error* in the Margin, that thereby the Attorney on the other Side may, if he looks upon the Roll, ſee that there is a Writ of Error brought and allowed; and if he after Sight of the Roll, or Notice of the Allowance of the Writ of Error, doth proceed to take out Execution upon the Judgment, the Execution will be ſet aſide. (*Mich.* 1649. *B. S.*) And a *Superſedeas quia improvide emanavit* ſhall iſſue forth; becauſe upon the Allowance of the Writ of Error, and Notice thereof given to the Attorney, the Hands of the Court where the Judgment was given, were forecloſed from proceeding any farther; and ſo it was improvidently done for them to grant out Execution after the Writ of Error brought and allowed.

How the Roll to be marked, if a Writ of Error be brought to reverſe a Judgment.

C **Ordered,** That no Rolls of the precedent Term ſhall be received into the Office after the Eſſoin-Day of the ſubſequent Term, without a Rule of Court for that Purpoſe. *Mich.* 9 *W. B. R.*

No Rolls of a precedent Term ſhall be received after the Eſſoin-Day of the ſubſequent Term, without a Rule of Court.

D **By** a Rule made by the Court of King's Bench in *Michaelmas* Term 1705, it is ordered, That every Attorney ſhall bring in his Rolls into the Office fairly engroſſed, in a good full Court-Hand, by the Times limited by former Rules; (that is to ſay) the Rolls of *Trinity*, *Michaelmas* and *Hillary* Terms, before the Eſſoin-Day of every ſubſequent Term: And the Rolls of *Eaſter* Term, before the firſt Day of *Trinity* Term: And that no Attorney at large, or any other Perſon, ſhall take any Numbers, or file any Rolls, but the Clerks of the Chief Clerks of this Court only.

Who to take Numbers and file Rolls.

E **Where** Rolls may be amended, and where not. See in Titles **Amendment** and **Jeofails.**

Where Rolls are amendable.

Rules.

See { **Declarations.**
Demurrers.
Judgments.
Pleadings.
Orders.

What Rules of Court are, ſee in Title Orders. A

The Court will compel the Obſervance of Rules made by Conſent of Parties.

If a Rule of Court be made betwixt Parties by B their Conſent, although the Court would not have made ſuch Rule without their Conſent, yet if either Party refuſe to obey ſuch a Rule made, the Court will upon Motion grant an Attachment againſt the Party that diſobeys the Rule, for the other Party if he deſires it; for this diſobeying the Rule is a trifling with the Court, and a Contempt to the Authority thereof, to which by their Conſent they ſubmitted themſelves: This was in a Caſe between *Middleton* Plaintiff, and Sir *John Lenthal* Defendant, upon a Rule made by their Conſents, that Sir *John Lenthal* ſhould ſeal a Releaſe of Errors upon a Judgment. *Hill.* 1655. *Jan.* 23. *B. S.*

If no Defence be made to a Motion for a Rule, the Counſel that moved, if he do not like the Rule, may ſtrike the Minutes out of the Clerk's Paper.

Where Counſel moves for a Rule where there is C no Defence made, and when the Rule comes to be drawn up, he doth not like the Minutes taken, he may, before the Rule drawn up and entred, come to the Clerk of the Rules and ſtrike the Minutes out of his Paper, and take nothing by his Motion.

The Court will not make a Rule for that which is done by the Courſe of the Court.

The Court will not make a Rule for a Thing D which may be done by the ordinary Courſe of the Court; and if the Court be informed that they have made ſuch a Rule, they will vacate it. (*Mich.* 22 *Car. B. R.*) For the Court is not to be troubled with needleſs Motions, and to do impertinent and uſeleſs Things; for this is not for the Honour of the Court, and it doth put the Client to needleſs Trouble and Charge.

Attorneys muſt obſerve the Rules of the Court.

A **The** Attorneys are bound to obſerve the Rules of the Court, for if they ſhould not, other Attorneys would not know what to do in their Clients Cauſes, nor the Judges how to judge of the Legality or Illegality of the Proceedings in Cauſes. (*Mich.* 22 *Car. B. R.*) For to proceed in any Thing without a Rule, is to walk in the dark, and tends to bring Things to Confuſion; and it is a Contempt to the Court, to diſobey the Rules of it.

Plaintiff and Defendant are bound to take Notice of the Rules made in the Cauſe between them.

B **The** Plaintiff and Defendant are both bound at their Peril to take Notice of the Rules made in Court touching the Cauſe depending between them. (*Hill.* 22 *Car. B. R.*) Except Part of the Rule be, that one Party ſhall give Notice to the other of the Rule made againſt him, and then they are not bound to take Notice of them without Notice given of them.

The Court ought not to grant a Day-Rule to a Priſoner, except he have Suits depending.

C **The** Court ought not to give a Rule to any Priſoner in the King's Bench Priſon, to go at large, except ſuch a Priſoner have Suits in Law of his own depending at the Time of the Rule made. (*Paſch.* 23 *Car. B. R.*) And in ſuch a Caſe it is uſual to give him Leave ſo far as to ſolicit his own Cauſes.

In Motions the laſt Rule made in the Cauſe muſt be produced.

D **If** there be divers Rules of Court made in a Cauſe, and one of the Parties intends to move the Court upon a Rule formerly made, he muſt ſhew the laſt Rule made in the Cauſe. (*Paſch.* 23 *Car. B. R.*) For elſe the Court cannot underſtand how far the Cauſe hath been proceeded in, nor how it ſtands in Court.

The Court will make a Rule by Conſent of Parties, which they would not have made without it.

E **The** Court will make ſuch a Rule by the Conſent of both the Parties, which without their Conſent they would not have made. (*Paſch.* 23 *Car. B. R.*) For, *Conſenſus partium tollit errorem*; and neither Party hath Cauſe to complain, for *volenti non fit injuria.*

No Day-Rule for a Priſoner who is not in the King's Bench.

F **The** Court will not make a Day-Rule for a Priſoner that is not impriſoned in the King's Bench Priſon. (*Paſch.* 23 *Car. B. R.*) For that only is the Priſon which properly belongs to this Court, and which this Court hath Juriſdiction over, and Conuſance of the Cauſes of the Priſoners there.

When a Priſoner in the King's Bench may have a Rule, and what ſuch Rules extend to.

G **Any** Priſoner in the King's Bench Priſon may have a Rule of Court every Day the Court ſits, to go at large, if ſuch Priſoner hath Buſineſs in Law of his own to follow; but ſuch Rules do only extend to give him Leave to go and to inſtruct his Counſel, and not for him to go elſewhere at his Pleaſure, or to lie one Night out of the Priſon. (*Paſch.* 23 *Car. B. R.*) Though under colour of ſuch Rules the Priſoners do too often go at large upon other Occaſions than their Rules do give Warrant for. See *poſtea.*

How Rules of Court to be interpreted.

A **Rules** of Court ought to be interpreted according to Rule and Order, and not incertainly. (*Mich.* 23 *Car. B. R.*) For were it otherwiſe, they would become Snares to intrap, and not Rules to order the Proceedings of the Clients.

Prothonotaries of *C. B.* will not make a Certificate of their Proceedings there without a Rule of Court.

B **The** Prothonotaries of the Common Pleas will not make a Certificate to this Court of their Proceedings and Practice there, without Rule of this Court to enjoin them to do it. (*Trin.* 24 *Car. B. R.*) But upon ſuch a Rule made they are to do it for the better informing this Court, and that the Courſe of Juſtice may not be interrupted or delayed for want of ſuch a Certificate as the Cauſe requires.

If a Rule be not drawn up the ſame Term, the Clerk will not draw it up afterwards without a new Motion.

C **If** a Rule of Court be made and it is not drawn up and entered before the Continuance-Day of the ſame Term it is made, the Clerk of the Rules will not draw it up afterwards until the Court be moved, and ſhall again order it to be entred. *Paſch.* 1656. *B. S.*

If Writings be brought into Court by Rule, the Court will make a new Rule to deliver them out.

D *Paſch.* 1659. By *Glyn* Chief Juſtice. If Writings be brought into the Court by Rule of Court, upon a Motion the Court will make a Rule to deliver them out, if there be Occaſion for them; but if they be brought in by Agreement of the Parties in private, the Court will make no Rule in it, for without a Rule of the Court, or a Cauſe depending in the Court between the Parties, the Court is not poſſeſſed of them.

A Priſoner may not go into the Country by Virtue of a Day Rule, except about Law Affairs.

E **If** a Priſoner have a Day-Rule to permit him to go abroad, yet he ought not by Virtue thereof to go into the Country, except it be in Caſe where he goeth about his Buſineſs in Law then depending in Court. *Mich.* 1651. *B. S.* 12 *Nov.*

If the Court makes a Rule upon an Affidavit, he that moves againſt it muſt bring Copies of the Affidavits.

F **If** the Court does make a Rule which was grounded upon an Affidavit, he that will move the Court againſt this Rule, muſt bring into Court a Copy of the Affidavit and Rule thereupon made, that the Affidavit may be read in Court, to put the Court in Mind for what Reaſons they made the Rule, and whether there be ſtronger Reaſons for the vacating of it, than there was for the making of it, or not.

How a Rule by Conſent at a Judge's Chamber ſhall be made a Rule of Court.

G **A Rule** made in a Judge's Chamber by Conſent of the Attorneys on both Sides, under their Hands, muſt have a Judge's Hand to it, and be entred in the Office with the Clerk of the Rules, or elſe it is of no Force to ground a Motion upon: For by the Entry of it in the Office, it becomes a Rule of the Court.

Sale of Goods.

See { Market-Overt.
Replevin.
Sheriff.
Trover.

A A Man became indebted to the King by Bond, and ſold a Leaſe which he had for a valuable Conſideration: The Sale binds the King becauſe it was but a Chattel; and a Sale *bona fide* after Judgment, but not after Execution, is good. 8 *Rep.* 171. *a. b.*

The King's Debtor by Bond ſells a Leaſe; it ſhall bind the King, if there be no Execution upon it.

B The King's Debtors ſhall not be in a worſe Condition than a Felon or Traytor, who may, after the Felony and Treaſon, before Conviction, ſell, *bona fide*, for his Suſtenance. 8 *Rep.* 171. *a. b.*

Traytor and Felon may ſell Goods for Suſtenance till Conviction.

Satisfaction.

C Satiſfaction is either the giving of a Recompence for an Injury done, or elſe where a Judgment is had againſt a Perſon who pays the Money upon it, the Plaintiff then gives a Warrant directed to an Attorney, to acknowledge Satiſfaction for him upon the Record of his Judgment.

Satisfaction, what.

Satisfaction pleaded of a Thing performed before the Date of the Bond, is not good.

Satisfaction pleaded to an Obligation which appears to be of a Thing which was performed before the Date of the Obligation, is not good. (*Mich.* 22 *Car. B. R.*) For the Obligation which creates the Duty, ſhall not be intended to be dated after the enſealing and Delivery of it, and ſo ſuch Satisfaction can no ways anſwer the Duty created by the Obligation. A

Executor muſt not pay Money by Virtue of a Decree in Chancery, before a Debt due upon an Obligation of the Teſtator's, and grown due after his Death.

Legacies, that are to be paid by an Executor by Virtue of a Decree in Chancery, are not to be ſatisfied by the Executor before a Debt due upon an Obligation made by the Teſtator, and grown due after the Death of the Teſtator. By *Rolle* Ch. Juſtice, (*Trin.* 23 *Car. B. R.*) For a Debt due by Law is to be preferred before a Debt created by a Decree in Equity. B

Whether a Legacy given by a Teſtator, or a Covenant broken in his Life-time, ſhall be firſt ſatisfied.

Whether a Legacy given by the Teſtator, or a Covenant entred into by him in his Life-time, and broken in the Time of the Executor, ſhall be firſt ſatisfied. (*Trin.* 22 *Car. B. R.*) *Quære*, In *Eeles* and *Lambert*'s Caſe, after many Arguments *pro* and *con*, and held miſchievous to be determined either way. C

Guardian may acknowledge Satisfaction upon Record for an Infant.

A Guardian may acknowledge Satisfaction upon Record for the Infant unto whom he is Guardian, for a Debt, which as Guardian he hath recovered for the Infant. (*Trin.* 23 *Car: B. R.*) For it is Reaſon that he that hath Power given him to recover a Debt for the Infant, ſhould have alſo Power to diſcharge the Party of whom it is recovered, when he hath received it of him, and he is accountable to the Infant for what he acts for him. D

Day given to the Plaintiff to ſhew Cauſe why he ſhould not acknowledge Satisfaction upon a Releaſe by him given.

To ſave the Trouble and Charge of an *Audita Quærela*, &c.

A Releaſe of a Judgment was ſhewn in Court, and prayed by Counſel, That the Plaintiff ſhould ſhew Cauſe why he ſhould not, at the Defendant's Charges, acknowledge Satisfaction upon the Record of the Judgment, which was granted, it being for a ſmall Sum, and to ſave the Trouble and Charge of an *Audita Quærela*, or of a *Sci. Fa. ad cognoſcendum vel dedicendum ſcriptum.* 6 *W. & M. B. R.* E

Where the Defendant might bring the Money into Court.

Before Plea.

The ancient Courſe of this Court was, That if the Defendant will make Satisfaction for that which he is ſued for, to the Intent that the Court may cauſe the Plaintiff to ceaſe his Proſecution, and may receive the Satiſfaction offered; that the Defendant ſhould come into Court before he pleads, and tender preſent Satisfaction, or elſe the Court would not receive this Tender, nor order any Thing in it. (*Hill.* 1650. *B. S.*) But now if the Defendant doth offer Satisfaction after he has pleaded, and give a Reaſon to the Court why he did not do it before Plea pleaded, the Court will not utterly reject it, but will refer it to the Secondary to F end the Matter, the Defendant making full Satisfaction for the Principal Money, and for Costs and Damages ſuffered and expended by the Plaintiff in the Suit. But ſee now the Clauſe in the Statute of 4 & 5 *Annæ*, *For the Amendment of the Law*, to this Purpoſe.

4 & 5 Annæ.

A **The** Defendant cannot make a Tender of Amends in Satisfaction of a voluntary Treſpaſs, but he may for an involuntary Treſpaſs, and Diſclaimer of any Right to the Land; and this is by the Statute of 21 *Jac. cap.* 15. *ſect.* 5. For in Caſe of a voluntary Treſpaſs, he acts that which in his own Knowledge is a Breach of the Law; but in the other Caſe the Law is broken without his Knowledge.

Defendant cannot make a Tender of Amends for a voluntary Treſpaſs, but for an involuntary he may.

21 Jac. c. 15. ſect. 5.

Scandalum Magnatum.

B **Scandalum Magnatum** is an Action brought by a Nobleman qui tam, &c. upon the Statute of 12 R. 2. cap. 11. 2 R. 2. cap. 5.

Scandalum Magnatum. 12 R. 2. cap. 11. 2 R. 2. cap. 5.

C **The** Statute of *Scandalum Magnatum* is a general Law, of which the Court is to take Notice. 4 *Rep.* 12. *b.* 13.

The Statute of *Scandalum Magnatum* is a general Law.

D **The** Defendant may juſtify in a *Scandalum Magnatum*, ſetting forth the Special Matter. 4 *Rep.* 13, 14.

The Defendant may juſtify in it, ſetting forth the Special Matter.

E **See** an Action brought upon this Statute, and ſeveral Objections to the Declaration upon a Motion to arreſt Judgment, with the Anſwers to them, and Judgment for the Plaintiff. *Cro. Car.* 135. *pl.* 10. 136.

Directions to bring an Action upon this Statute.

Scire Facias.

See
- Audita Querela.
- Bail.
- Judgment.
- Execution.
- Payment.
- Reſtitution.

Sci. Fa. what.

A Sci. Fa. is a judicial Writ iſſuing out of the Record, and lies where Debt and Damages are recovered, and no Execution is ſued out within a Year and a Day; then after the Year and Day the Plaintiff ſhall have this Writ to ſummon the Defendant to ſhew Cauſe why there ſhould not be Execution ſued out upon the Judgment againſt him; and if he can ſhew no Cauſe, then there is Judgment, Quod habeat Executionem. A

Againſt Bail.

And this Writ lies againſt Bail to an Action, and if upon the Sci. Feci or two Nichils returned the Bail do not appear, Judgment will be entred againſt them. B

The Writ of *Sci. Fa.* when given. 18 E. 1. cap. 45.

This Writ was not at the Common Law, but given by the Statute of *Weſtm.* 2. *cap.* 45. in perſonal Actions, where Debt or Damages were recovered: And before this Writ, if the Plaintiff had not ſued out his Execution in a Year and a Day after his Judgment, he had no Remedy, but only a new Action of Debt upon his Judgment; but now he hath his Liberty to bring either a *Sci. Fa.* or Action of Debt as he pleaſeth. See 2 *Inſt.* 469. C

An Execution taken out within the Year may be continued 'till ſerved.

If the Plaintiff takes Execution within the Year, and it is not ſerved, yet he may continue the ſame upon the Roll from Term to Term till it is ſerved, and need not ſue out any *Sci. Fa.* 2 *Inſt.* 471. D

A **A** *Sci. Fa.* ought to be as ſhort as poſſible, becauſe it is the Nature of Writs to ſet forth Things very briefly, and a Writ is therefore called a Brief, from the Latin Word *breve*, which ſignifies ſhort or compendious. (*Mich.* 21 *Car. B. R.*) And a *Sci. Fa.* is in the Nature of an Original Writ.

Muſt be as ſhort as poſſible.

B **A** *Sci. Fa.* to repeal a Patent, muſt be brought where the Record is, which is in Chancery, and there muſt be two *Sci. Fa.* ſued out of the Petty-bag directed to the Sheriff of *Middleſex*, and the Sheriff of *Middleſex* muſt by a Letter under the Seal of his Office, ſend Notice to the Corporation or Perſon whoſe Concern the Patent is, that there is a *Sci. Fa.* ſued out returnable at ſuch a Time, and remaining with him, for the Revocation of ſuch a Patent, and that unleſs they take care to appear thereunto, there will be Judgment againſt it by Default; and this Letter muſt be delivered to the Corporation or Perſon intereſted in ſuch Patent by ſome Perſon who can make Oath thereof. See *Dalton* of Sheriffs.

How to bring a *Sci. Fa.* to repeal a Patent.

C *Sci. Fa.* againſt the Tertenants of the Conuſee of a Recognizance in Chancery, ought to be againſt all of them. 2 *Saund.* 23.

Againſt Tertenants, muſt be againſt all of them.

D **For** what Proceedings are regular in Point of Practice in ſuch a Recognizance, where ſome of them demur, and others plead to the Iſſue. *Id.* 23, 24, 25.

How to proceed when ſome demur, and others plead to Iſſue.

E **If** upon a *Sci. Fa.* upon a Recognizance in the Chancery, the Record be tranſmitted into *B. R.* to try the Iſſue, and the Plaintiff is nonſuit; he may well bring a new *Sci. Fa.* in *B. R.* upon the Record there. *Id.* 27.

Sci. Fa. on a Recognizance in Chancery, Record tranſmitted to *B. R.* to try the Iſſue: Plaintiff is nonſuit, he may have a new *Sci. Fa.* in *B. R.*

F **Where** in a *Sci. Fa.* to have Reſtitution to Lands extended upon an *Elegit*, and that the Defendant *recuperet reſiduum debit' & dampn'* not levied, it ſhall be ſufficient for the Plaintiff to ſay, that he was ready to pay the ſaid Reſidue, without tendring of it in Court. *Id.* 72.

Where in a *Sci. Fa.* to have Reſtitution to Lands, and that the Defendant ſhould receive the Reſidue, *&c.* ſhall be ſufficient for Plaintiff to ſay he was ready to pay the Reſidue.

G **It** was ſaid by *Glyn*, Chief Juſtice, in the Caſe betwixt *Newton* and *Baſpoole*, *Trin.* 1657. That a *Sci. Fa.* which is taken out upon a Judgment which is only ſigned in the Office, and not made up upon Record, is not good; but the Record of the Judgment ought firſt to be made up, and then a *Sci. Fa.* to be taken out; for before that there is no Record to warrant the *Sci. Fa.*

Sci. Fa. not made up upon Record is not good.

H **A** *Sci. Fa.* to revive a Judgment ought not to be granted, if the Record be not in the Court where the *Sci. Fa.* was moved for. (*Trin.* 24 *Car. B. R.*)

The Record muſt be in the Court where *Sci. Fa.* is moved for.

For the Record is the Warrant for the *Sci. Fa.* and if there be no ſuch Judgment, there is no Ground to move for it.

Muſt be directed into the County where the Original was brought.

A *Sci. Fa.* ought to be directed into the County where the original Action was brought, upon which the Judgment to be revived by the *Sci. Fa.* was obtained. (*Trin.* 1650. *B. S.* 23 *Car. B. R.*) For it ſhall be intended that the Party againſt whom the Judgment was obtained doth inhabit ſtill in that County. A

Where a *Sci. Fa.* to hear Errors is not well brought.

A *Sci. Fa. ad audiendum Errores* is not well brought before the Record of the Judgment be certified into the Court, to reverſe which the Writ of Error was brought, and Errors aſſigned thereupon. (21 *Car. B. R.*) For there is no Record in Court to warrant the granting of it, before the Record of the Judgment is certified, and Errors thereupon aſſigned. B

Muſt be fifteen Days between the *Teſte* and Return of a *Sci. Fa. ad audiendum Errores.*

There muſt be fifteen Days between the *Teſte* and Return of every *Sci. Fa. ad audiendum Errores* upon a Writ of Error returnable in the King's Bench; and if upon a *Sci. Fa.* or two *Nichils* returned, the Defendant in the Errors doth not appear, it is not with him as it is in the Caſe of a *Sci. Fa. quare executionem non*; but then the Cauſe muſt be ſet down to be heard by the Court, and the Plaintiff in the Errors ſhall he heard thereunto *ex parte.* The Defendant might, if he thought fit, have appeared, but ſince he did not, the Court will proceed thereupon. C

Need not be fourteen Days between *Teſte* and Return of *Sci. Fa.* on a Recognizance.

There need not be fourteen Days between the *Teſte* and the Return of a *Sci. Fa.* upon a Recognizance. 1 *Lutw.* 26. D

Repugnancy in a *Sci. Fa.* on a Recognizance.

A *Sci. Fa.* upon a Recognizance was *Quare, &c. in forma præd. recognit' ſecund. formam recuperationis præd.* Theſe Words are repugnant and void. *Ibid.* E

How to bring a *Sci. Fa.* againſt Bail on a Recognizance on a Writ of Error.

If a *Sci. Fa.* be brought againſt Bail upon a Recognizance in a Writ of Error generally, without expreſſing the Action or the Condition of the Recognizance, there the *Sci. Fa.* muſt be returnable on a general Return *ubicunq;* But if the Action and the Condition of the Recognizance be ſet forth in the *Sci. Fa.* and appears to be by Bill, then the *Sci. Fa.* muſt be returnable at a Day certain in Court. *Per Magiſtr. Liveſay & al. &c. Paſch.* 21 *Car.* 2. F

Sci. Fa. on a Judgment in *C. B.* muſt expreſs the Name of the Ch. Juſtice before whom Judgment was given.

In a *Sci. Fa.* brought upon a Judgment given in the Common Pleas, it is neceſſary to ſhew before what Chief Juſtice by Name, *viz. A. B. & Sociis ſuis*, the Judgment was given; but it is not neceſſary to do it in a *Sci. Fa.* upon a Judgment given in this Court. (23 *Car. B. R.*) Becauſe the Proceedings are in the Common Pleas *coram* the Chief Juſtice *& Sociis ſuis*, but in the King's Bench they are *coram Domino Rege.* G

A Where either Plaintiff or Defendant, or one of the Plaintiffs, or one of the Defendants, die, there cannot be any Execution ſued out upon the Judgment until a *Sci. Fa.* ſued out, and Judgment thereupon; becauſe there muſt be a new Judgment upon the *Sci. Fa.* to warrant the Execution, that being different from the old Judgment.

If either of the Parties die, Execution cannot be ſued out, till a *Sci. Fa.* and Judgment upon it.

B There muſt be eight Days excluſive between the *Teſte* and Return of each *Sci. Fa.* againſt Bail, and not one, four or five Days, and the other twelve, *&c. Per Magiſtr. Liveſay, & al* &c. *Paſch.* 21 *Car.* 2.

Muſt be eight Days between the *Teſte* and Return of each *Sci. Fa.* againſt Bail.

C Alſo there muſt be eight Days excluſive betwixt the *Teſte* and Return of every *Ca. Sa.* to warrant a *Sci. Fa.* againſt Bail, and the *Capias* ought to be delivered to the Sheriff four Days before the Return be out. *Paſch.* 21 *Car.* 2. *Per Magiſtrum Liveſay & al*, &c.

Likewiſe between the *Teſte* and Return of every *Ca. Sa.* to warrant *Sci. Fa.* againſt Bail.

D Heirs, Executors or Adminiſtrators, although they are Privies, yet they ſhall not have Execution, but are put to their *Sci. Fa.*

Heirs, Executors and Adminiſtrators, muſt bring their *Sci. Fa.*

E But where there is a Judgment in the Common Bench removed by Error in the King's, there, when the Judgment is affirmed, there may be an Execution within a Year and a Day after the Affirmation, without a *Sci. Fa.* though the Judgment were recovered ſeven Years before in *C. B.* 2 *Inſt.* 271.

There need be no *Sci. Fa.* upon a Judgment affirmed.

F A *Sci. Fa.* ought to be brought in the ſame County where the Action is laid, for it muſt always purſue the firſt Action. *Cro. Jac.* 331. *pl.* 13.

Sci. Fa. muſt be brought in the County where the Action is laid.

G An Original was in *London*, and Declaration in *Middleſex*; it is good againſt the Party, but the Bail is diſcharged, and not liable to a *Sci. Fa.* 3 *Lev.* 235, 245.

An Original in *London*, and a Declaration in *Middleſex*; it is good againſt the Party, but the Bail are diſcharged.

H No *Sci. Fa.* lies againſt the Bail, until a *Non eſt inventus* be returned upon a *Ca. Sa.* againſt the Principal, and the Writ filed. *Lutw.* 1273.

No *Sci. Fa.* lies againſt the Bail till a *Ca. Sa.* returned and filed.

I To a *Sci. Fa.* againſt the Bail the Defendant pleads, That the Principal was dead before the *Sci. Fa.* brought, and ſays not when he died, nor that he died before the *Ca. Sa.* ſued out againſt him; and for theſe Reaſons it is naught. *Cro. Jac.* 97. *pl.* 26. 165. *pl.* 2.

Death of the Party pleaded, and ſays not when; nor before the *Ca. Sa.* ſued out.

K Upon a *Non eſt inventus* returned upon the *Ca. Sa.* the Recognizance is forfeited, becauſe there was a Default in the Party; and though it is uſual to render the Body upon the *Sci. Fa.* yet that is of Grace, not of Neceſſity; ſo that the Death at the Time of the *Sci. Fa.* brought is not material, if he were alive when the *Ca. Sa.* was returned. *Cro. Jac.* 165. *pl.* 2.

He muſt be pleaded to be dead before the *Ca. Sa.* returned.

Where a *Sci. Fa.* in Ejectment, and how after the Death of the Defendant.

A *Sci. Fa.* was ſued out upon a Judgment in Ejectment againſt the Party, who entred into the Lands after the Death of the Defendant in Ejectment. *Lutw.* 1267, 1268. And the Executors of the Defendant in the Judgment. 3 *Lev.* 100.

Where the Defendant is ſummoned upon a *Sci. Fa.* and doth not appear, he is perpetually barred.

B **Where** the Defendant is ſummoned upon a *Sci. Fa.* and a Summons returned, and he doth not appear, but lets Judgment go by Default, he is for ever barred. 1 *Lev.* 41, 42. *Moor.* Caſe 700.

How a *Sci. Fa.* muſt be againſt Bail upon a Judgment affirmed in the Exchequer-Chamber.

C **A** *Sci. Fa.* againſt Bail upon a Writ of Error, returnable in the Exchequer-Chamber, and Judgment affirmed, was quaſh'd, becauſe returnable upon a Day certain, and not upon a Return-day. 1 *Lev.* 246.

Payment no Plea upon a *Sci. Fa.* and why. 4 & 5 **Ann.**

D **Payment** is no Plea to a *Sci. Fa.* upon a Judgment, becauſe it is a Debt upon Record. 3 *Lev.* 119, 120. But this is now altered by 4 & 5 *Annæ.*

Judgment againſt a Feme Sole, who takes Huſband, and a *Sci. Fa.* againſt Baron and Feme, and Judgment.

The Feme dies, and a *Sci. Fa.* againſt the Huſband, and good.

E **A Judgment** was recovered againſt a Feme Sole who takes Huſband, and then a *Sci. Fa.* iſſued out againſt Baron and Feme upon that Judgment, and Judgment thereupon, *Quod habeat Executionem*, againſt Baron and Feme; then the Wife dies, and a *Sci. Fa.* iſſued againſt the Huſband, reciting all this Matter; and held that it was good, and the Huſband liable, becauſe there was a Judgment duly entred, *Quod habeat Executionem*, againſt him and his Wife; and being thereby become liable to ſatisfy the Judgment, he ſhall be always ſo until it be ſatisfied. 1 *W.* & *M. B. R. O Bryan* and *Ram*'s Caſe.

A *Sci. Fa.* cannot be ſued out upon a Judgment of ten Years ſtanding, without Motion.

F **One** may have a *Sci. Fa.* to revive a Judgment, upon which no Execution hath been executed without any Motion, if it be but ſeven Years paſt ſince the Judgment was had: And if it be above ſeven Years, and under ten Years ſince the Judgment was had, a *Sci. Fa.* may be moved for at the Side-Bar to revive it; but if it be above ten Years ſince the Judgment was had, then a *Sci. Fa.* cannot be had without moving the Court, and a Rule for it; but the Court doth not uſe to deny it, if it be moved for.

Where Bail is taken in the Country, a *Sci. Fa.* may be ſued out either in *Middleſex*, or that County.

G **Bail** taken by a Commiſſioner in the Country, a *Sci. Fa.* may be ſued out againſt them, either in *Middleſex*, or the County where taken. *Lutw.* 1287.

How to plead to a *Sci. Fa.* upon a Recognizance in the Common Pleas to proſecute a Writ of Error.

H **How** to plead to a *Sci. Fa.* upon a Recognizance in the Common Pleas to proſecute a Writ of Error with Effect. See Title **Pleas.**

How to ſue out a *Sci. Fa. Quare Executionem non* upon a Writ of Error.

I **When** a Writ of Error is brought returnable in this Court, and the Record is brought in, the Defendant may thereupon ſue out a *Sci. Fa. Quare*

Executionem habere non debet, and an *alias Sci. Fa.* after that if there be not a *Sci. Feci* returned upon that firſt Writ, but there muſt be fifteen Days between the *Teſte* and Return of each *Sci. Fa.* and if the Plaintiff in the Errors after a *Sci. Feci*, or two *Nichils* returned, doth not before the Rule for Judgment upon the *Sci. Fa.* is out, appear and aſſign Errors, or plead to the *Sci. Fa.* there will be Judgment againſt him thereupon, *Quod habeat Executionem*. But, *Note*, The Writ of Error depends ſtill until Judgment be affirmed or reverſed, or the Plaintiff in the Errors is nonſuited, which muſt be upon a Rule given by the Secondary for him to aſſign his Errors upon Record by a certain Day, and there ſhall be Coſts by the Statute of *H.* 7. See in Title **Errors**.

If Error be not aſſigned, there will be Judgment, *Quod habeat Executionem.*

But the Writ of Error is ſtill in being.

H. 7.

A *Sci. Fa.* againſt the Bail, who plead Payment of the Money by the Principal before the ſuing out of the ſecond *Sci. Fa.* The Plaintiff replies, *Non ſolvit & hoc paratus eſt verificare*. The Defendant demurs, becauſe he doth not conclude to the Country. *Curia.* It is ill, becauſe he hath not pleaded Payment before the firſt *Sci. Fa.* ſued out, as the Writ requires.

How Payment is to be pleaded by Bail upon a *Sci. Fa.*

B A *Sci. Fa.* was brought againſt the Bail, who pleads a Writ of Error depending upon the Judgment, and prays Judgment if the Plaintiff ſhall be anſwered; and upon a Demurrer it was held to be an ill Plea, for that the *Sci. Fa.* is collateral to the Judgment. 6 *W.* & *M.* *B. R.* But if there had not been a *Ca. Sa.* ſued out, and returned by the Sheriff *Non eſt inventus*, and filed before the *Sci. Fa.* had come to him, the Bail might have taker Advantage thereof; and if they had pleaded no *Ca. Sa.* returned and filed againſt the Principal, that had been a good Plea.

It is no Plea for the Bail to ſay, there is a Writ of Error depending; but it is a good Plea to ſay, that there was no *Ca. Sa.*

C A *Sci. Fa.* was brought againſt Bail, and in the *Sci. Fa.* the Recognizance was mentioned to be, that the Principal ſhould anſwer ſuch Damages as in *hac parte*, inſtead of *ea parte adjudicarentur*; and for this Reaſon the Court ſeemed to be of Opinion, that the *Sci. Fa.* was naught; but no Judgment was given, the Writ of Error being quaſh'd for a Fault which was in it. *Burr* and *Atwood*. *Hill.* 12 *W.* *B. R.*

In a *Sci. Fa.* in an inferior Court it was ſaid *adjudicatur*, and ill.

D **Note**, The *Teſte* of the *Alias Sci. Fa.* muſt be the Day of the Return of the firſt. 3 *Annæ* *B. R.*

When the *Teſte* of the *Alias* to be.

E It was made a general Rule by the Court, That no *Alias Sci. Fa.* ſhould be ſued out until after the Return of the firſt *Sci. Fa.* *Trin.* 8 *W. Tertii Regis in B. R.*

No *Alias Sci. Fa.* to be ſued out till after the Return of the firſt.

F It hath been uſed of late to make out a *Fi. Fa. de bonis Teſtatoris*, and alſo a *Sci. Fa.* and a Writ of Inquiry, all in one Writ, againſt an Executor or Adminiſtrator; but anciently they were diſtinct

How to ſue out a *Sci. facias* upon Inquiry.

Writs or Proceſſes, and to be diſtinctly and ſeverally executed. The making out of a *Sci. Fa.* with a *Fi. Fa.* was deviſed for the ſpeedier Way to obtain Execution upon the Judgment. But **Note**, After an Inquiry returned, there muſt be a *Sci. Fa.* to which the Defendant may appear, and plead *Non Devaſtavit.*

When a *Sci. Fa.* may be traverſed.

Where a Writ of Error lies upon a *Sci. Fa.*

Doth not lie upon a *Sci. Fa.* in an Action by Bill.

Quod coram vobis reſidet for Error in Fact.

A **A** *Sci. Fa.* may be pleaded to before Judgment given upon it; but after Judgment, it is too late to plead to it: But a Writ of Error may be brought to reverſe the Judgment given upon the *Sci. Fa.* if the *Sci. Fa.* was not good upon which the Judgment was grounded. *Note*, Such Writ of Error doth not lie in the Exchequer-Chamber, becauſe it is *Caſus omiſſus* out of the Statute of Queen *Elizabeth.* But if a Writ of Error will lie, it muſt be *coram vobis reſidet*, for Error in Fact only.

How to proceed upon a *Judicium Revocetur*, where Money is levied in Execution.

B **When** a Judgment for Monies is reverſed by a Writ of Error in this Court, a *Sci. Fa.* ſhall upon the Return of *Fi. Fa.* filed upon Record, whereupon a *Fi. feci* of the Money is returned, iſſue out againſt the Plaintiff in the Judgment reverſed, to ſhew Cauſe why the Plaintiff in the Writ of Error, whereby the Judgment was reverſed, ſhall not have the Monies repaid to him, which were recovered and levied upon him by Virtue of the *Fi. Fa.* ſued out upon the Judgment which was reverſed. (*Mich.* 22 *Car. B. B.*) And to this *Sci. Fa.* it ſeems he may come in and plead. See Title **Reſtitution.**

Upon a Releaſe of all Judgments, the Defendant may ſue upon a *Sci. Fa.* againſt the Plaintiff in the Judgment *ad cognoſcendum ſcriptum relaxationis.*

So where there is a Deed to diſcharge the Plaintiff, he may, inſtead of an *Audita Querela*, have this Writ.

C **Where** the Plaintiff in the Judgment releaſeth the Defendant of all Judgments and Executions, *&c.* the Defendant may upon this Releaſe ſue out his Writ of *Sci. Fa.* in the Court where the Judgment was entred againſt the Plaintiff in the Judgment *ad cognoſcendum ſcriptum ſuum relaxationis. Mich.* 5 *W. & M. B. R.* So alſo, in any Caſe where there is a Deed to diſcharge a Perſon, he need not to ſue out his *Audita Querela*, but may have his *Sci. Fa.* againſt the Defendant, *ad cognoſcendum ſcriptum*, and he ſhall have the ſame Benefit thereupon as upon his *Audita Querela. Hill.* 5 *W. & M. B. R.*

A *Sci. Fa.* lies for the future Breach of a Covenant, after a Recovery upon the firſt Breach.

D **In** Covenants perpetual when once broken, and a Recovery thereupon, if they are afterwards broken, a *Sci. Fa.* may be ſued out upon the Judgment, and a new Action need not to be brought. *Cro. El.* 3. See for this Title **Aſſumpſit.**

Adminiſtrator *de bonis non*, may have *Sci. Fa.* upon a Judgment after Verdict recovered by an Executor or Adminiſtrator, 17 **Car.** 2. cap. 8.

E **Where** any Judgment after Verdict ſhall be had by or in the Name of any Executor or Adminiſtrator, the Adminiſtrator *de bonis non* may ſue out a *Sci. Fa.* and take out Execution upon ſuch Judgment, by the Statute of 17 *Car.* 2. *cap.* 8. This was a temporary Act, but made perpetual by 1 *Jac.* 2. *cap.* 17.

A **Where** a Judgment is againſt two, and one of them dies, a *Sci. Fa.* may be ſued out againſt the Tertenants of the Deceaſed, and alſo againſt the Survivor.

Judgment againſt two, and one dies, there may be a *Sci. Fa.* againſt his Tertenants, and alſo againſt the Survivor.

B **A Writ** of Error is the Continuance of the Cauſe, and there no *Sci. Fa.* is required, though it depend ſeven Years or more; becauſe pending the Writ of Error the Plaintiff's Hands were tied up from ſuing out of an Execution.

There needs no *Sci. Fa.* where a Cauſe hath depended long upon a Writ of Error.

C **If** one doth not proceed upon a Writ of *Sci. Fa.* within a Year and a Day after it was taken out, he cannot after that Time proceed upon that Writ, but muſt ſue out a new *Sci. Fa.* for the old Writ is diſcontinued; and ſo it was adjudged *tempore Jac.* 2.

If there be no Proceeding upon a *Sci. Fa.* within a Year and a Day after Judgment, there muſt be a new *Sci. Fa.*

D **Where** Bail is put in to an Action brought in this Court (except thoſe taken by Commiſſioners in the Country, which may be ſued in *Middleſex*, or Country where taken. *Lutw.* 1287.) the *Sci. Fa.* againſt them muſt always be ſued out into *Middleſex*, becauſe all Bails to Actions are ſuppoſed to be taken in Court, which is in *Middleſex*: But in caſe of a Recognizance entred into by Bail upon a Writ of Error, if it be entred to be taken at a Judge's Chamber in *London*, then the *Sci. Fa.* to be ſued out thereupon, muſt be ſued out in *London*, becauſe there the Recognizance whereupon it iſſues out was taken.

Where a *Sci. Fa.* muſt go againſt Bail put in before a Judge.

Where upon a Recognizance upon a Writ of Error.

E **The** Court will not always upon a Motion quaſh a *Sci. Fa.* againſt the Bail, becauſe there is not any *Ca. Sa.* ſued out, returned and filed, but the Party may plead it if he pleaſes, and it will be a good Plea. *Trin.* 30 *Car.* 2. *B. R.*

The Court will not upon Motion quaſh a *Sci. Fa.* againſt the Bail for want of a *Ca. Sa.* but will put the Party to plead it.

F *A.* and *B.* were Bail jointly and ſeverally for *C.* The Plaintiff in the Action ſued out a *Sci. Fa.* jointly againſt them, and had Execution adjudged, and then died; and then *B.* one of the Bail died, and the Plaintiff's Executor ſued out a *Sci. Fa.* againſt the Executor of *B.* without taking any Notice of *A.* And the Defendant demurred, becauſe the Plaintiff's Teſtator had determined his Election to take this as in a joint *Lien. Curia.* The Plaintiff has by the *Sci. Fa.* determined his Election to make the Recognizance joint. *Paſch.* 34 *Car.* 2. *B. R.*

Two bound jointly and ſeverally, the Plaintiff ſued out a *Sci. Fa.* and had Judgment againſt them, and died.

One of the Bail died, and the Plaintiff's Executor ſued out a *Sci. Fa.* againſt his Executor, without mentioning the other Bail.

The Plaintiff hath determined his Election to make this Recognizance joint.

G **If** an Adminiſtrator obtains a Judgment for a Debt due to the Inteſtate by Default or Confeſſion, and the Adminiſtrator doth afterwards die inteſtate, and Letters of Adminiſtration are granted to one *de bonis non*, &c. of him that died firſt inteſtate:

Where an Adminiſtrator *de bonis non* may have a *Sci. Fa.* upon a Judgment recovered by the firſt Adminiſtrator, and where not.

This

This Adminiſtrator cannot have a *Sci. Fa.* to revive the Judgment obtained by the firſt Adminiſtrator of the firſt Inteſtate, but he muſt bring a new Action to recover that Debt; for he is no ways Party or Privy to the firſt Judgment, but a meer Stranger to it: But if the Recovery were by Verdict, he may now by 17 *Car.* 2. *cap.* 8. have a *Sci. Fa.* upon it. *Note*, This Act was temporary, but made perpetual by 1 *Jac.* 2. *cap.* 17.

17 Car. 2. cap. 8.

Quare, &c. ſecundum formam & effectum recuperationis, inſtead of *recognitionis*.

Where good, and where not.

In a *Sci. Fa.* againſt Bail the Plaintiff ſaid in his A
Writ, *Quare Executionem non, &c. ſecundum formam & effectum recuperationis*, inſtead of *recognitionis*; and it was held to be good enough notwithſtanding, becauſe the Recognizance not being in a Sum certain as it is in the Common Pleas, but only what ſhall be recovered, it is well enough to ſay, *Secundum formam & effectum recuperationis prædictæ.* Hill. 1 *W. B. R.*

Quare dampna aſſideri non debent upon the Statute of 8 & 9 W. 3. c. 10. where the Defendant dies after the interlocutory Judgment.

8 & 9 W. 3. cap. 10. Adminiſtratrix pleads Judgment recovered.

No Plea, and why.

A *Sci. Fa. Quare dampna aſſideri non debent* was B
ſued out againſt an Adminiſtrator upon an interlocutory Judgment againſt the Inteſtate, by Virtue of the new Statute made 8 *&* 9 *W. cap.* 10. *For preventing of vexatious Suits, &c.* The Adminiſtratrix to this *Sci. Fa.* pleads Judgments recovered againſt her upon Bonds entred into by her Inteſtate; and this was upon a Demurrer adjudged no Plea, becauſe the Act doth not allow Executors or Adminiſtrators to ſay any Thing in Bar of the Action, more than the Teſtator or Inteſtate could have ſaid, if living, which was only in Arreſt of Judgment; but here he ſhall not be chargeable with Coſts.

Where upon a *Sci. Fa.* the Plaintiff ſhall recover his Coſts.

8 & 9 W. cap. 10. ſect. 3.

In all Suits upon a *Sci. Fa.* and Prohibitions, the C
Plaintiff obtaining of Judgment, or Award of Execution after Plea pleaded, or Demurrer joined, ſhall have his Coſts: So where the Plaintiff is nonſuited or diſcontinues, or a Verdict be found againſt him. 8 *&* 9 *W. cap.* 10. *Sect.* 3.

Muſt ſhew the Judgment affirmed.

A *Sci. Fa.* will not lie for Coſts without ſhewing D
that the Judgment was affirmed in *Cam. Scac. Mod. Caſes in Law and Equity* 73.

That it muſt be brought in the proper County.

A *Sci. Fa.* for Coſts muſt always go into that E
County where Execution on the original Judgment ſhould be made; but Debt on ſuch Judgment, or one Recognizance, may be laid in any County. *Ibid.*

Miſnomer.

A *Sci. Fa.* againſt the Bail of *John*, when his F
Name was *Thomas*. *Ibid.* 113.

Execution executed after the Teſtator's Death.

An Execution ſued out before the Teſtator's Death G
may be executed after, without a *Sci. Fa. Ibid.* 225.

Pledges amendable.

A *Sci. Fa.* againſt Pledges in Replevin is in Na- H
ture of a Declaration, and amendable. *Ibid.* 313.

A **A** *Sci. Fa.* may be againſt the Bail jointly, and yet a ſeveral Execution againſt each of them. *Mod. Caſes in Law and Equity* 199.

Joint and ſeveral.

B **The** Principal and Bail cannot join in a Plea to the *Sci. Fa.* *Ibid.* 290.

Principal and Bail.

C **Tenant** in Life Remainder to his Iſſue in Tail acknowledged a Statute and died; a *Sci. Fa* iſſued on the Statute againſt the Iſſue in Tail, and returned a *Sci. Fa.* if the Iſſue does not come at the Day, he may be charged with the Execution, and can no way avoid it or ſet it aſide. *Ibid.* 113.

Sci. Fa. againſt Iſſue in Tail.

D **Proceedings** againſt the Bail ſtayed, becauſe only four Days between the *Teſte* and Return of the *Sci. Fa.* brought by the Executor againſt the Principal. *Ibid.* 305.

Teſte and Return.

E **There** muſt be fifteen Days incluſive between the *Teſte* of the firſt and Return of the ſecond *Sci. Fa.* againſt Bail, and the firſt muſt be duly return'd before the ſecond is ſued out; and it ought to be four Days in the Office. *Ibid.* 227, 281.

The like.

F **Moved** to ſet aſide Proceedings on a *Sci. Fa.* in which were many Razures and Interlineations, but denied. *Ibid.* 243.

Razures and Interlineations.

G **But** if any material Alteration be made therein by the Clerk, *&c.* after it is ſealed, this is a Miſdemeanor, and puniſhable. *Ibid.*

H **A** *Sci. Fa.* directed to the Sheriff of *Middleſex*, will not lie on a Recognizance taken at a Judge's Chamber in *London*; but if it be inroll'd at *Weſtminſter* the Party has his Election. *Ibid.* 290.

Scire Facias on Recognizance.

I **If** a Judgment in Ejectment be more than a Year's ſtanding a *Sci. Fa.* muſt be, and Notice given. *Ibid.* 366.

Ejectment.

K **That** a *Sci. Fa.* is an Action. *Comb.* 455.

Action.

L **A** *Sci. Fa.* lies againſt the Pledges in Replevin by Plaint after an *Elongavit* return'd. *Ibid.* 1.

Replevin.

M **A** *Sci. Fa.* lies in *B. R.* upon a Recognizance removed out of *C. B.* *Ibid.* 197.

Recognizance.

N **Execution** of a Judgment in Ejectment ought not to be after the Year without a *Sci. Fa.* *Ibid.* 250.

Ejectment.

O **In** a *Sci. Fa.* againſt Tertenants, *&c.* one may be ſummoned by a Rent liable to a Judgment. *Ibid.* 185. But the Summons ought to be upon the Land. *Ibid.*

Tertenants.

P **On** a *Sci. Fa.* againſt Tertenants, one of them ought not to anſwer 'till the others are warned. *Comb.* 282, 283. *Salk.* 598.

The like.

Audita Querela.

A **Though** if he does anſwer he may have an *Audita Querela, viz.* not to avoid the Extent, but to have Contribution. *Comb.* 282, 283. *Salk.* 598.

Againſt Huſband after the Death of Wife.

B **Judgment** againſt a Feme Sole, who after Marries, a *Sci. Fa.* Iſſues againſt the Huſband and Wife, and ſhe dies, a new *Sci. Fa.* well lies againſt the Huſband after her Death. *Comb.* 103.

For Huſband after the Death of Wife.

C **So** a *Sci. Fa.* lies for the ſurviving Huſband where a Debt was attached in him by a Judgment had on a *Sci. Fa.* in the Wife's Life. *Comb.* 455. *Skinner* 682.

To reverſe a Fine.

D **A** *Sci. Fa.* ought to be to the Tertenant on a Writ of Error to reverſe a Fine; but this is the Courſe and Caution of the Court, and not of Neceſſity. *Comb.* 318. *Salk.* 598.

Joint and ſeveral.

E **Where** a *Sci. Fa.* ſhall be joint and where ſeveral. *Comb.* 397, 98.

What no Plea.

F **Error,** *Coram Nobis* is no Plea to a Judgment on a *Sci. Fac. Ibid.* 12.

G **Nor** Error in *Cam. Scac. Ibid.* 394.

The Effect.

H **A** *Sci. Fa. quod habeat executionem,* and a Judgment had thereon, this doth not alter or enlarge the firſt Judgment. *Carth.* 93.

Joint and ſeveral.

I **Where** a joint Judgment was had againſt two, and one died before Execution, the *Sci. Fa.* ought to be brought againſt both. *Ibid.* 105.

Tertenants.

K **It** need not be brought againſt the Tertenants on a Writ of Error to reverſe a common Recovery. *Ibid.* 111.

Where a *Sci. Fa.* not neceſſary.

L **Where** Execution may be taken out without *Sci. Fa.* to revive the Judgment. *Ibid.* 236, 283. *Salk.* 602.

Of the *Teſte* and Return.

M *Scire Facias* againſt an Adminiſtrator *Teſte October* 24, and returnable *October* 31, and an *alias Sci. Fa. Teſte, October* 31, and returnable *Nov.* 7. it was objected, that theſe Writs were irregular, becauſe there were not fifteen Days excluſive between the 24th of *October* and the 7th of *November*, but adjudged well, there being eight Days between the *Teſte* and Return of each Writ. *Carth.* 468.

Teſte and Return.

N **See** the Rule for ſuing out and returning *Sci. Fa.* in *B. R.* and how it differs from *C. B. Salk.* 599. *Skinner* 633.

The like.

O **Fifteen** Days incluſive to be between the *Teſte* of the firſt and Return of the laſt. *Ibid.*

The like.

P **And** eight Days between the *Teſte* and Return when againſt the Principal, in order to diſcharge the Bail. *Salk.* 602.

A **If** againſt the Principal the Writ is *in hac parte*, if againſt the Bail *in ea parte*. *Salk.* 599.

Principal and Bail.

B **A** *Sci. Fa.* againſt Bail in *B. R.* muſt be brought in *Middleſex* only, *aliter* in *C. B.* *Ibid.* 564, 600.

Where to be brought.

C **A** *Sci. Fa.* againſt Bail muſt lie in the Sheriff's Hands a convenient Time. *Ibid.* 599.

How long to lie in the Office.

D **A** *Sci. Fa.* on Recognizance of Bail, aſſigning a Breach that the Defendant did not pay nor render *Priſonæ Mar. Mareſch. noſtræ.* *Ibid.* 602.

Breach of the Recognizance.

E **Whether** a *Sci. Fa.* lay in Perſonal Actions before in *Weſtm.* 2. and Lord *Coke*'s Opinion doubted, *Ibid.* 600.

Perſonal Actions.

F **A** *Sci. Fa.* lies on a Judgment in Ejectment, and may be general againſt all the Tertenants, or particular, and name them. *Ibid.* 600. 3 *Salk.* 319.

Ejectment.

G **Tertenants** returned for ſeveral Parts can't join in a Plea which goes to one Part only. *Salk.* 601.

Tertenants not to join in a Plea.

H **Where** *Non tenure* may be pleaded generally, and where ſpecially. *Ibid.*

Non tenure.

I **Judgment** on a *Sci. Fa.* againſt Bail reverſed for want of Warrant of Attorney. *Ibid.* 603.

Judgment reverſed.

K **Where** the *Sci. Fa.* againſt the Tertenants is general, it is not ſafe for them to plead in Abatement that there are other Tertenants not named. 3 *Salk.* 321.

Againſt Tertenants.

L **Whether** when a *Sci. Fa.* is brought againſt two who were Bail, and Judgment is recovered upon it by the Plaintiff, and he dies, and one of the Bail dies, the Executor of the Plaintiff can bring a *Sci. Fa.* againſt the Survivor of the Bail only. *Skin.* 82.

For an Executor of the Plaintiff againſt the ſurviving Bail.

M **Where** after Judgment in Ejectment the Term expires, the Tenant cannot bring a *Sci. Fa. quare executionem habere non debet* of the Land; but he may have a *Sci. Fa.* for Damages and Coſts. *Ibid.* 161.

Ejectment.

N **Upon** a Writ of Error to reverſe a Common Recovery, it was moved that a *Sci. Fa.* be granted againſt the Tertenants, and adjudged to be a ſettled Rule to grant a *Sci. Fa* in ſuch Caſe. *Ibid.* 273.

On a Writ of Error to reverſe a Recovery.

O *Sci. Fa.* and an Inquiry granted upon a Suggeſtion that *A.* and his Wife, and *B.* and his Wife, againſt whom the Judgment was, had waſted, the Sheriff returned, That *B.* and his Wife *Devaſtaverunt*, and ſays nothing of *A.* and his Wife, this ſeems an ill Return, and not aided by the Statute of *Jeofails*, and the Judgment given upon ſuch Return erroneous. *Ibid.* 571, 572.

Return of a *Devaſtavit Sci. Fa.* is ill.

Though a Judgment had upon a *Sci. Fa.* does not alter the Nature of the Debt, yet it changes the Property of the Debt, and an Action of Debt may be brought upon the Award of Execution. *Skinner* 683. A

Seaman, See **Wages.**

Secondary.

See **Jury.**

Who the Secondary is.

B **THIS is an Officer who is second or next to the Chief Officer; as the Secondary of the Fine-Office, Secondary of the Compter; who is next to the Sheriff of** London **in each of the two Compters. Secondary of the Office of the Privy Seal,** Anno 1 Ed. 4. cap. 1. **Secondaries of the Pipe, two: Secondaries to the Remembrancer, who are two Officers in the Exchequer.**

Where he shall return a Jury.

C **Where** the Secondary shall return a Jury, and where not. See Title **Jury.**

Second Deliverance, See **Replevin.**

Seiſin.

See
Avowry.
Fealty.
Homage.
Pleas.
Replevin.
Statute of Limitations.
Tenure.

A SEiſin **ſignifies in the Common Law, Poſſeſſion.** Co. Litt. 152. b.

Seiſin, what.

B **Where** the Seiſin in an Avowry is traverſable, and not the Tenure. 9 *Rep.* 44. *a. b.* and where the Tenure is traverſable. 9 *Rep.* 35. *a.*

Where in an Avowry, the Seiſin, and not Tenure, is traverſable, and where the Tenure.

C **In** Caſe of Seiſin of more Rent than there ought to be, ſhall bind in an Avowry, but not in a *Ne injuſte vexes*, *Ceſſavit*, Aſſize, Reſcous, or Treſpaſs; for the Tenure, and not the Seiſin, ſhall be traverſed. 9 *Rep.* 34. *a.*

In caſe of Seiſin of more Rent than due.

Tenure and not Seiſin traverſable.

D **Where** the Lord alledges Seiſin by the Hands of the Plaintiff, or any other in Replevin, as by the Hands of his very Tenant, the Plaintiff may plead that the Lord was never ſeiſed by the Hands, *&c.* 9 *Rep.* 35. *a.*

The Plaintiff may plead, that the Lord was never ſeiſed *per manus*, *&c.*

E **Where** the Plaintiff agrees with the Avowant in Services, and varies in the Quantity of Land, the Traverſe ought to be, *abſque hoc* that he held *modo & forma*, or with a *tantum*. 9 *Rep.* 35. *b.*

Where the Traverſe is to be with a *modo & forma.*

F **Seiſin** of Rent or Suit, or other Annual Service, is a ſufficient Seiſin of Homage, Fealty, Relief, Heriot-Service, or ſuch caſual Services, which perchance may not happen in forty, ſixty or ſeventy Years. 4 *Rep.* 8. *b.* 9. *a.*

What is a ſufficient Seiſin of Homage, Fealty, Relief, Heriot-Service, *&c.*

G **Seiſin** of one annual Service is not Seiſin of another annual Service; as if there be Lord and Tenant by Fealty, 10 *s.* Rent, and three Days Work by the Year. Seiſin of the Rent is no Seiſin of the Work-Days, nor Seiſin of the Rent is no Seiſin of the Suit of Court which is annual. 4 *Rep.* 9. *a.*

Seiſin of one Annual Service is not Seiſin of another.

What Seiſins theſe are to be intended.

Note, Theſe are to be intended only Seiſins in Law, which is ſufficient to avow upon, although the Lord, nor any one under whom he claims, have had Seiſin within ſixty Years. 4 *Rep.* 12. *a.* But as to the bringing of an Aſſize, actual Seiſin is requiſite, and not a Seiſin in Law. 4 *Rep.* 9. *a.* A

What Seiſin is requiſite to bring an Aſſize.

Where the Seiſin is not traverſable, but the Tenure only.

The Seiſin is not traverſable, but the Tenure only in a Writ of Eſcheat, *Ceſſavit*, or Reſcous. 4 *Rep.* 11. *a* B

Upon what Seiſins Writs of Right may be brought. So alſo, 32 H. 8. cap. 2.

By the Stat. of 32 *H.* 8. *cap.* 2. it is enacted, C

Firſt, That no Perſon ſhall have a Writ of Right of the Seiſin of his Anceſtor, except Seiſin was had within ſixty Years before the *Teſte* of the Writ. D

Mort d'Aunceſtor, Aiel, Coſinage, Entrie ſur Diſſeiſin.

Secondly, Nor any Writ of *Mort d'Aunceſtor, Aiel, Coſinage*, or Entry *ſur Diſſeiſin*, unleſs within fifty Years.

Thirdly, Nor any Action of his own Seiſin or Poſſeſſion, except within thirty Years.

Avowry, Conuſance.

32 H. 8. cap. 2.

Fourthly, Nor any Avowry or Conuſance for any Rent, Suit or Service, except Seiſin be had within fifty Years after ſuch Avowry. 4 *Rep.* 10. *a.* *Note*, Though it is in the printed Statute-Book (fifty) yet it appears by all the Caſes which have been upon it ſince, it ſhould be only (forty) Years. See *Co. Litt.* 268. *b.* 8 *Rep.* 65. *a.* *&c.*

Where a Warden of a College muſt alledge a Seiſin within thirty Years, and where within ſixty.

If the Warden that now is of a College was ever ſeiſed, he ought to count upon a Seiſin within thirty Years; but upon the Seiſin of his Predeceſſor he ought to count of a Seiſin within ſixty Years, as another common Perſon muſt. 4 *Leon. Caſe* 277. E

When Writs of Formedon in Diſcender, Rebutter and Remainder to be brought.

21 Jac. cap. 16.

Writs of Formedon in Diſcender, in Reverter and Remainder, muſt be brought within twenty Years, by the Stat. of *Limitations.* 21 *Jac. cap.* 16. F

The Profits of the Land are the Eſplees.

The Profits of all and every Part of the Land are the Eſplees of the Land, and prove the Seiſin of the whole Land. *Vaugh.* 255. G

How a Seiſin muſt be pleaded, and when traverſed.

Where the Defendant alledges a Seiſin in one under whom he claims, the Plaintiff cannot alledge Seiſin in another from whom he claims, before the Seiſin of, *&c.* without traverſing, confeſſing or avoiding of the Seiſin alledged by the Defendant. *Cro. Eliz.* 30. *pl.* 2. See *Aleyn* 32, 33. H

Replevin.

Where the original Seiſin ſhall be traverſed in a Replevin. *Comb.* 230. I

Of Seiſins and Diſſeiſins. *Ibid.* 8, 146, *&c.* K

Servant, See **Maſter and Servant.**

Seſſions.

A THE Juſtices of the Peace muſt make their Seſſions four Times in the Year, *viz.* The firſt Week after the Feaſt of St. *Michael*; the firſt Week after the Feaſt of *Epiphany*; the firſt Week after the Feaſt of *Eaſter*, and the firſt Week after the Tranſlation of St. *Thomas* the Martyr.

When the four ſeveral Quarter-Seſſions muſt be kept. 2 H. 5. cap. 4.

B The Seſſions have no Juriſdiction to indict for Forgery by the Common Law. *Mod. Caſes in Law and Equity* 321.

Forgery.

C They have no Juriſdiction in Perjury by the Common Law, but have by Statute. *Ibid.*

Perjury.

D They have Juriſdiction *de conſpirationibus*. *Ibid.*

E A Seſſions Order againſt ſelling Ale, *&c.* quaſhed, becauſe the County was only in the Margin, and not in the Body of the Order. *Ibid.* 309.

An Order defective in not naming the County.

F The Stat. 5 & 6 *E.* 6. *cap.* 25. has not given the Seſſions nor two Juſtices Power to put down Alehouſes at Diſcretion. *Ibid.*

Alehouſes.

G An Order for removing poor Children, quaſhed, *&c.* becauſe their Ages were not ſhewn. *Salk.* 387.

Order of Removal quaſhed.

H The Quarter-Seſſions may try the ſame Seſſions that Iſſue is joined, if there be fifteen Days for the Return of the *Venire*. *Comber.* 235.

Trial the ſame Seſſions.

I In Corporations they rarely hold their Seſſions quarterly, but as they have Occaſion. *Per Eyres & Comber.* 286.

Corporation Seſſions.

K The Seſſions may puniſh an Overſeer by Indictment for Fraud in his Accompts, but not by ordering him to return the Money, *&c.* *Comber.* 374.

Their Power in puniſhing Frauds.

L Where an Appeal lies at the next Quarter-Seſſions, if it be received and lodged there, 'tis ſufficient. *Ibid.* 365, 418.

Appeal.

M Alſo an Appeal to the next Quarter-Seſſions after Notice is good; but it ought to appear ſo in the Order, and that the Appellant had no Notice of the intervening Seſſions. *Ibid.* 218, 418.

When good.

N Where a Statute gives Authority to two Juſtices of Peace without Appeal, it may be executed at the Seſſions. *Ibid.* 374.

Power given to two Juſtices to be executed by the Seſſions.

The

When the Seſſions to be held.

The Seſſions may be held by Cuſtom at other Times than the Statute appoints. *Comber* 420. A

Petty-Treaſon.

One cannot be indicted at the Seſſions for Petty Treaſon. *Ibid.* 405. B

To diſcharge an Apprentice.

The Seſſions cannot make an original Order to diſcharge an Apprentice. *Carth.* 198. *Salk.* 491. *contra.* C

An Order *Ad generalem Seſſionem pacis*, but did not ſay *quarterialem*, was held not good. *Carth.* 222. *Salk.* 474, 476. D

Order to be vacated by Implication.

Seſſions muſt affirm or vacate the firſt Order, and it may be vacated by Implication. *Carth.* 223. E

Adjournment.

An Appeal may be adjourned from one Quarter-Seſſions to another. *Salk.* 447, 605. F

The like.

Seſſions cannot be entred as ſitting three Days together, but muſt be an Adjournment. *Ibid.* 494. 605. G

One of the Juſtices a Party.

An Order of Seſſions quaſhed, becauſe it concerned one of the Juſtices named in the Style of the Court. *Ibid.* 607. H

Not to uſe the County Stock.

They cannot make an Order to proſecute an Offender out of the County Stock. *Ibid.* I

Their Power over their Orders.

They may alter and ſet aſide their own Orders the ſame Seſſions. *Ibid.* 494, 606. K

So their Order for one to relieve his Father 'till the Seſſions order the contrary, is good. *Ibid.* 534. L

A Special Order of Seſſions ought not to conclude to the Opinion of *B. R.* *Ibid.* 486. M

They may affirm or quaſh, but not ſuperſede an Original Order, the contrary is good. *Ibid.* 434. N

Alehouſes.

They cannot ſuppreſs an Alehouſe licenſed, unleſs for Diſorder. *Ibid.* 470. O

Power extends.

Their Power extends only to ſuch Trades as are named in the Statute. *Vide* **Apprentices.** *Ibid.* 471. P

Proper Judges.

They are proper Judges to oblige one to take an Apprentice or not. *Ibid.* 491. Q

Diſtinct Orders.

Orders on two different Statutes muſt be diſtinct. *Ibid.* 487. R

Removal.

The Seſſions on an Appeal cannot ſend to a third Place nor Party. *Ibid.* 475. S

Not to refer a Matter at another Seſſions.

And the Seſſions on an Appeal cannot refer a Matter to be determined by another Seſſions. *Ibid.* 477. T

A bad original Order not to be made good.

If the firſt Order be naught, no ſubſequent Order on an Appeal can make it good. *Ibid.* 482. U

Their quaſhing an Order.

And where they quaſh an Order it muſt appear to be on an Appeal. *Ibid.* 479. X

An

A **An** Appeal from an Order of Baſtardy muſt be to the General Seſſions. *Salk.* 482.

Appeal of Baſtardy.

B **And** to the firſt Seſſions after Notice to the Father of the firſt Order. *Ibid.* 480.

To the firſt Seſſions.

C **An** Appeal from an Order of Corporation Juſtices muſt be to the Seſſions of the County, not the Corporation. *Ibid.* 490.

From Corporation Juſtices.

D **The** Seſſions cannot annex Pariſhes, but may Order one Pariſh to contribute to the Poor of another. *Ibid.* 480, 481.

To order Contribution.

E **Upon** an Appeal from a Poor's Rate, the Seſſions may quaſh the whole Rate. *Ibid.* 483.

May quaſh a Poor's Rate.

F **And** they may make or order the Church Wardens, *&c.* to make a new Rate. *Ibid.*

Order a new Rate.

G **Seſſions** may appoint and remove High and Petty Conſtables, and are the beſt Judges of the Matter. *Ibid.* 150, 502.

Conſtables.

H **Upon** an Appeal from an Allowance of Overſeers Accounts, the Seſſions muſt execute their Judgment in the ſame Manner as two Juſtices ought to do. *Ibid.* 553.

How the Seſſions to execute their Judgments.

I **The** Seſſions being but one Day in Law, they may alter their Judgment, and make a new Order; but muſt certify only the latter. *Ibid.* 494.

May alter their Judgment.

K **And** they need not ſet forth the Reaſons of their Judgment, and how the Court ſhall judge thereon. *Ibid.* 607, 608.

Not to ſet forth their Reaſons.

L **Where** they have no Juriſdiction but by Appeal. 3 *Salk.* 257.

Appeal.

M **They** muſt either reverſe or affirm an Order, they cannot make a new Order on a third Pariſh. *Ibid.* 254.

Not to make an Order on a third Pariſh.

N **They** cannot ſuperſede an old Order. *Ibid.* 256.

Not to ſuperſede an Order.

Settlement of the Poor.

O SEE ſeveral late Statutes made in this Matter, *viz.* A Statute made 43 *Eliz. cap.* 2. Another made 3 *&* 4 *W. & M. cap.* 17. And another made 8 *&* 9 *W. cap.* 30. Another the 9 *&* 10 *W. cap.* 11. See alſo more of this Matter in *Nelſon*'s Juſtice of Peace, from 371, to 381.

Several late Statutes about the Poor.

43 Eliz. cap. 2.
3 & 4 W. & M. c. 17.
8 & 9 W. c. 30.
9 & 10 W. cap. 11.

What ſhall be a Settlement in a Pariſh.

A **If** one have hired in a Pariſh a Dwelling-houſe of 10 *l. per Annum* Rent, and be ſettled in that Houſe but a ſmall Time, yet this is ſuch a Settlement in the Pariſh where the Houſe is, that the Juſtices of the Peace have no Power to make an Order to remove the Party ſettled, out of the Pariſh wherein he was ſo ſettled; except the Party ſo ſettled be lame or blind, or likely to be ſuddenly chargeable to the Pariſh where he was ſo ſettled. *Mich.* 11 *Nov.* 1650. *B. S.*

What makes a Settlement.

B **Taxing** a poor Man will not make a Settlement unleſs he pay it. 3 *Salk.* 253.

The like.

C **The** Settlement of the Huſband makes a Settlement of his Wife and Children. *Ibid.* 256.

Children, when their Parents dead.

D **But** if the Parents are both dead, the Children muſt be ſettled where born. *Ibid.* 257.

Servants.

E **Where** the Service was for more than a Year, tho' not upon one Contract, yet it makes a Settlement. *Ibid.*

Parents and Children.

F **Where** the Settlement of the Parents ſhall be the Settlement of the Children, where not. *Ibid.* 259.

Sheriff and Under Sheriff.

See
Arreſt.
Bail and Bail-Bond.
Eſcape.
Falſe-Impriſonment.
Jury.
Oaths.
Obligations.
Partition.

A Sheriff, what.

G **A Sheriff is an ancient Officer, and a Miniſter of the King's Courts of Law and Juſtice; and is to attend at thoſe Courts, and execute their Proceſs, and make due Returns thereof. He hath alſo a Court of his own, which is called the Sheriff's Court.**

The Court generally orders the Sheriff to attend the Secondary to return a Jury for Trials at Bar.

H **In** Trials at the Bar the Court doth uſually order the Sheriff to attend the Secondary of the Office, with his Book of Freeholders of the County where the Land in Queſtion doth lie, that an indifferent Jury may be ſtruck by the Secondary in the Preſence of the Attornies on both Sides, and afterwards returned by the Sheriff. *Mich.* 22 *Car. B. R.*

A **A Sheriff** is not bound to return a Writ directed unto him, except the Party whom the Writ doth concern, do tender him his Fees for the executing of it; that is, in ſuch Caſes where he is allowed Fees. *Mich.* 22 *Car. B. R. Tamen Qu. de ceo.* For the very Words of the Writs do enjoin the Sheriff to make a Return of them. (*Mich.* 22 *Car. B. R.*) So that it ſeems he is to return them whether the Parties concerned do call on him or not; and if he be not paid his Fees where he is allowed to take them, he may recover them by an Action.

He need not return a Writ till the Party tenders him his Fees.

B **A Sheriff** out of his Office cannot be fined by the Court, becauſe he ceaſeth to be an Officer of the Court; but a Tipſtaff may be ſent for him, to bring him in to anſwer a Miſdemeanor committed by him when he was in his Office; alſo the Proceſs which the Law allows againſt him when he is out of his Office, is a *Diſtringas nuper Vic'* and *Diſtringas* after *Diſtringas*, until he doth appear. 22 *Car. B. R.*

When out of his Office he cannot be fined; and how to proceed then againſt him.

C **Where** a Sheriff takes a Bail Bond warranted by the Statute of *H.* 6. of two good Men of viſible Eſtates in the County at the Time of the taking thereof, and afterwards they become inſolvent, yet the Sheriff ſhall be excuſed; for he is obliged to let to Bail upon good Security, and this Security at the taking thereof (though it proved inſolvent afterwards) was good Security.

Bail Bond taken by him of ſuch as afterwards become inſolvent, he ſhall be excuſed.

D **The** Under-Sheriff ought always to have his Deputy to be attendant in Court, to receive and execute their Commands, and to give account to the Court of Buſineſſes which may fall out concerning the Sheriff and his Office; and he ought to file a Warrant of Attorney for his High-Sheriff in every one of the Courts at *Weſtminſter-Hall* by an Attorney of each Court, otherwiſe an Action upon the Statute lies againſt his High-Sheriff for ſuch Neglect. *Hill.* 22 *Car. B. R.*

Deputy of the Under-Sheriff ought always to attend in Court.

E **Both** the Sheriffs of the City of *London* are in Law but one Sheriff of *Middleſex*; and all Proceſſes are directed to them as one Sheriff, and all Bail Bonds entred into to them, and ſued by them, are all entred into, and ſued as if entred into to one Sheriff, and ſued by one Sheriff. 11 *Feb. Hill.* 1650. *B. S.*

Both the Sheriffs of *London* are but one Sheriff of *Middleſex*.

F **Every** Sheriff ought to anſwer for the Miſdemeanors of his Bailiffs. (*Trin.* 1651. *B. S.*) For they are his Servants, and ought to be under his Government; and he uſually takes Security for their faithful and juſt Performance of their Duties in their Places.

Muſt anſwer for the Miſdemeanors of his Bailiffs.

G **All** Hundreds that were not granted in Fee by the Crown before the Time of *Ed.* 3. are joined to the Office of the Sheriffs. *Raym.* 361, 362, *&c.*

Hundreds not granted in Fee before E. 3. joined to the Office of Sheriff.

It

When a Priſoner in the Cuſtody of a Sheriff brings an *Habeas Corpus*, if any of the Actions againſt him be not returned, it is an Eſcape as to that Action.

A **If** a Sheriff omits the returning of any Action againſt a Priſoner charged with ſuch Action in his Cuſtody, when ſuch Priſoner brings his *Habeas Corpus* to turn himſelf over to the King's Bench, this is an Eſcape in the Priſoner as to the Action omitted to be returned, and the Sheriff ſhall be anſwerable for it.

Under-Sheriffs, Clerks, Deputies and Bailiffs of Liberties muſt take the Oaths in the Statute of 27 Eliz. cap. 12.

B **All** Under-Sheriffs, before they exerciſe their Office, ſhall before the Juſtices of the Circuit, or one of them, or *Cuſtos Rotulorum*, or two Juſtices of the Peace, one being of the *Quorum*, for the County where he ſhall be Under-Sheriff, take the Oath of Supremacy, as alſo the Oath of an Under-Sheriff mentioned in the ſaid Statute for an Under-Sheriff to take: So alſo Bailiffs of Franchiſes, Sheriffs Clerks and Deputies ſhall take the aforeſaid Oaths upon Pain of forfeiting 40 *l.* one Moiety to the King, the other to the Informer, by Action of Debt, *&c.* in any of his Majeſty's Courts of Record. And it is further enacted, That the Juſtices of Aſſize, and Juſtices of the Peace in open Seſſions, ſhall have Power to hear and determine the Defaults done contrary to this Act, as well by Preſentment and Information, as Indictment; and upon Conviction to award Execution, to levy the Forfeitures by *Fi. Fa.* Attachment, *Capias* or Exigent.

The Penalty 40 *l.*

How to be recovered and levied.

The Sheriff muſt in Perſon hold Plea of a *Juſticies*.

C **The** Sheriff in his own Perſon ought to hold Plea of a *Juſticies*, and if he deputes another to do it, it is void. 2 *Leon. Caſe* 260.

An Action lies againſt an Under-Sheriff for a Tort in his Office.

D **If** an Under-Sheriff imbezils a Writ, *ea intentione* to delay the Plaintiff in Execution of his Writ, or did not return it, theſe are Torts for which an Action lies againſt him. *Cro. El.* 175. *pl.* 1.

The Sheriff is the Officer of the Court, and ſhall anſwer for his Under-Sheriff.

E **The** Sheriff is the proper Officer of the Court, and ſhall anſwer for the Defaults and Neglects of his Under-Sheriff. *Latch.* 187.

He cannot take Advantage of ſuffering an Eſcape upon an erroneous Proceſs; but that will excuſe him in Treſpaſs.

F **The** Sheriff ſhall not take the Advantage to let a Perſon taken by an erroneous Proceſs to eſcape; but he ſhall be excuſed by Reaſon thereof in Falſe Impriſonment, for he is not to examine it, but to do his Duty as he is commanded. See *Cro. Jac.* 3. *pl.* 2. *Cro. Jac.* 289.

Sheriffs ſhall have the Cuſtody of all Gaols in their Counties.
19 H. 7. cap. 10.

G **Every** Sheriff within every County of this Realm ſhall have the Cuſtody, Rule, Keeping and Charge of every of the King's Common Gaols in the County where he is Sheriff, except the *Marſhalſea* and King's Bench Priſon in *Surrey*.

A **By** the Statute of 23 *H.* 6. *cap.* 8. it is enacted, That no Under-Sheriff or Sheriff's Clerk ſhall abide in the Office over one Year (except the Under-Sheriffs and other Officers within the City of *London*) upon the Forfeiture of 200 *l.* yearly, as he occupieth the ſame contrary to this Statute, and that any Pardon for that Offence ſhall be void.

That no Under-Sheriff (except in *London*) ſhall execute the Office above one Year, 23 **H.** 6. **cap.** 8. upon the Penalty of 200*l.*

B **No** Sheriff of *London* and *Middleſex* ſhall accept, demand, take or receive of their Under-Sheriff, directly or indirectly, or any in Truſt for them, any Sum of Money, Gratuity or Preſent whatſoever, for his Place of Under-Sheriff, nor be at any Expence or Charge in Relation thereunto, which hath been uſually paid by the High-Sheriff, except the Rewards given by this or any other Act for the apprehending of Highway-men, Clippers, Coiners, and Houſe-breakers, and the Fees of paſſing the High-Sheriff's Accounts in the Exchequer.

The Sheriffs of *London* and *Middleſex* to give the Under-Sheriff's Place without Fee or Reward.

C **By** an Act made 21 *Jac.* 1. *cap.* 5. entituled, *An Act that Sheriffs, their Heirs, Executors, and Adminiſtrators having a* Quietus eſt, *ſhall be abſolutely diſcharged of all their Accounts.*

A *Quietus* ſhall diſcharge a Sheriff from accounting. 21 **Jac.** 1. **cap.** 5.

D **The** Officer who vexeth the Sheriff contrary to this Act, ſhall forfeit to the Party grieved 40 *l.* to be recovered with Coſts and Damages.

The Penalty of acting contrary to this Act. See 14 **Car.** 2. **cap.** 21.

E **The** Sheriff muſt within two Months after he receives his Patent, appoint and proclaim in the Shire-Town four Deputies at the leaſt dwelling not above twelve Miles one from the other, who are to make Replevins, as himſelf may do, upon Forfeiture of 5 *l.* See what Oaths they are to take *ante* in this Title, and 27 *Eliz.* *cap.* 12. upon the Forfeiture of 40 *l.*

He muſt within two Months from the Receipt of his Patent make at the leaſt four Deputies to make Replevins. 1 & 2 **P.** & **M.** **cap.** 12.

Their Oaths and Forfeiture for not taking of them. 27 **Eliz.** **cap.** 12.

F **The** Sheriff muſt give a Kalendar of all his Priſoners to the Juſtices of Gaol-Delivery, upon Penalty of 5 *l.* So alſo muſt other Perſons having Priſoners in their Cuſtody.

Sheriffs muſt give to the Juſtices of Gaol-Delivery a Kalender of their Priſoners. 3 **H.** 7. **cap.** 3.

G **No** Sheriff ſhall while Sheriff be a Juſtice of the Peace in the ſame County where he is Sheriff.

Not to be Sheriff and Juſtice at one Time. 1 **M.** **cap.** 8.

H **By** an Act made in the fourth and fifth Year of Queen *Anne*, *For the Amendment of the Law*, which ſee in Title **Obligation**, how to ſue a Bail-bond in the Plaintiff's own Name.

Plaintiffs may ſue Bail-Bonds in their own Names. 4 & 5 **Ann.**

I **In** Debt upon a Sheriff's Bond, the Defendant (the Bail) pleads, That he had not any Thing within the County, and ſo the Bond was void by

No Plea for the Bail to ſay, He had not any Thing in the County.

23 H. 6. cap. 10.

23 *H.* 6. *cap.* 10. The Plaintiff demurred, and had Judgment, becauſe the Statute is only a Direction to the Sheriff. *Trin.* 7 *W.* 3.

How to proceed againſt the Sheriff, if the Party doth not appear.
23 H. 6. cap. 10.

A If the Sheriff takes Bail for the Appearance of ſuch Perſons as are not to be bailed, by 23 *H.* 6. *cap.* 10. and returns a *Cepi Corpus*; although the Party doth not appear, an Action lies not againſt the Sheriff for a falſe Return, but the Plaintiff muſt proceed againſt the Sheriff by Amercements.

Very foul Practice in an Under-Sheriff, how puniſhable.

B An Under-Sheriff ſells the Goods of a poor Defendant for 22 *l.* they being worth 80 *l.* and it appeared to the Court that he had procured the Goods to be appraiſed at an Under-value, pretending that it would be better for the poor Man; then he delivered them to the Plaintiff for the ſaid Sum; this is Oppreſſion, and indictable; and he was ordered to attend the Court. *Cro. Jac.* 426. *pl.* 12.

The Sheriff may bring Trover for Goods taken by him in Execution.

C The Sheriff may bring Trover for Goods which he hath taken in Execution, and afterwards they are taken away from him. 1 *Lev.* 280.

So alſo may bring Treſpaſs.

D So alſo he may bring Treſpaſs *Vi & Armis* for taking of his Goods. *Cro. Eliz.* 639. *pl.* 39.

Sheriff cannot detain for his Fees, but muſt bring his Action.

E A Sheriff cannot retain in his own Hands his Fees upon levying of Goods upon a *Fi. Fa.* but ought to bring his Action for them. *Mich.* 34 *Car.* 2. *B. R.*

The Sheriff ought not to receive the Money of the Defendant on a *Ca. Sa.*

F The Sheriff hath no Power to receive the Money of the Defendant upon a *Ca. Sa.* *Lutw.* 587, 588, 589. becauſe the *Ca. Sa.* requires only to have the Body of the Defendant at the Return of the Writ; but upon a *Fi. Fa.* he may receive the Money, and the Defendant may plead Payment to him. 2 *Lev.* 26. But if the Plaintiff will accept it of him upon a *Ca. Sa.* it is good. 5 *Rep.* 89. *b.*

But on a *Fi. Fa.* he may.
23 H. 6. cap. 10.

G A Bond taken by a Sheriff for the Payment of Money in Court at the Return of a *Fi. Fa.* is not void by the Statute of 23 *H.* 6. *cap.* 10. 10 *Rep.* 99. *b.* 100. *a.*

The Sheriff may take a Bail-Bond with or without Sureties.

H A Sheriff may take an Appearance Bond with one or more Sureties, nay, he may let him go without Sureties; for the Bond concerns not the Plaintiff, it being only for the Sheriff's Indemnity. *Cro. Eliz.* 808. *pl.* 11.

What Bonds a Sheriff may take, and what not.
23 H. 6. cap. 10.

I What Bonds a Sheriff may take, and what are made void by 23 *H.* 6. *cap.* 10. with a full Explanation of all the Parts of that Statute. See 10 *Rep.* from 99. *b.* to 102. *a.*

The Sheriff may break a Houſe to deliver Poſſeſſion.

K When a Houſe is recovered, the Sheriff may break open the Houſe to give Poſſeſſion or Seiſin to the Defendant or Demandant, upon Writs for that Purpoſe to him directed. 5 *Rep.* 91. *b.*

A **Where** a Sheriff's Bailiff enters into an Houſe to execute a *Fi. Fa.* the Doors being open, if the Party ſhuts and locks the Doors upon them, the Sheriff may break open the Doors to reſcue his Bailiff and make Execution, and the Court will grant an Attachment for the good Behaviour againſt the Aggreſſor. *Cro. Jac.* 556. *pl.* 20.

The Sheriff may juſtify breaking open of Doors to reſcue his Bailiffs.

B **In** all Caſes where the King is a Party, the Sheriff may break the Houſe if ſhut, either to take the Party, or make Execution for the King, if he cannot otherwiſe enter thereinto; but before he breaks it, he ought to ſignify the Cauſe of his coming, and requeſt them to open the Doors. 5 *Rep.* 92. *a.* And what where a Subject is the Plaintiff. See Title **Murder**, and *Cro. Car.* 537. *pl.* 2. 538.

What the Sheriff may do in the Execution of Writs where the King is Party, and alſo where a Subject is Party.

C **In** all Caſes where the Doors are open, the Sheriff may enter, and make Execution for a Subject, either of Body or Goods; and ſo may the Lord to diſtrein for Rent or Services. *Ib. Cro. Car.* 537, 538.

Where the Sheriff may enter to execute a *Ca. Sa.* or *Fi. Fa.*

D **But** the Sheriff cannot break open the Doors to execute a *Ca. Sa.* or *Fi. Fa.* where the Party refuſes upon Requeſt to open them. 5 *Rep.* 92. *a. b. Cro. Car.* 537, 538.

But cannot break open Doors to do it.

E **The** Houſe of any Man is his Caſtle, and altho' a Man kills another in his own Defence, or *per Infortunium*, yet it is Felony, and he ſhall forfeit his Goods; but if Thieves come to rob his Houſe, and the Owner or his Servants kill them in Defence of himſelf and Houſe, it is no Felony. 5 *Rep.* 91. *a. b. Cro. Car.* 537, 538.

A Man's Houſe is his Caſtle, and how he may defend it.

F **A Man** cannot aſſemble his Friends to go to Market with him to ſecure him from Violence, but to ſecure his Houſe he may. 5 *Rep.* 91. *b.*

Where a Man may aſſemble his Friends in his Defence.

G **A Man's** Houſe is only for himſelf, Family, and his Goods, not for a Stranger who flies thither for Shelter, or for his Goods, but the Sheriff after Requeſt, may break open the Doors. 5 *Rep.* 93. *a.*

A Man's Houſe is only to protect himſelf, not Strangers.

H **When** the Court awards a *Capias* againſt a Counteſs, the Sheriff or his Officer may execute it *impune*, for they are to execute, not to diſpute the Proceſs of the Court. 6 *Rep.* 54.

What the Sheriff or his Officer may do in the Execution of his Office, and how excuſable.

I **A Sheriff** or any Perſon by his Authority, who makes an Arreſt, ought to ſhew at whoſe Suit, and out of what Court, and for what Cauſe he arreſts him, and when returnable. 6 *Rep.* 54. *a.* See Title **Arreſt.**

The Perſon making an Arreſt ought to ſhew his Authority, if required.

Where a Bond taken of a Priſoner is not within the Statute. 23 H. 6. cap. 10.

A **A Bond** was taken by a Sheriff's Officer to the Plaintiff, with his Conſent, for the Appearance of a Man in Cuſtody at his Suit, and held not to be within the Statute of 23 *H.* 6. *cap.* 10. *Paſch.* 5 *W.* & *M. B. R.*

In an Action upon a Bond, and the Statute pleaded, the Impriſonment, and not the Deliverance, was traverſed, which is naught. 23 H. 6. cap. 10.

B **The** Statute of 23 *H.* 6. *cap.* 10. was pleaded and ſhewed that *A. B.* was in Execution, and the Bond was made for his Deliverance. The Plaintiff replied, That at the Time of making of the Bond, *A. B.* was at large; *abſque hoc* that he was then in Priſon; this Traverſe was held to be naught: For it ſhould have been, *abſque hoc* that it was made *pro deliberatione, &c.* 2 *Leon.* Caſe 136.

A Bond to appear at the next Quarter-Seſſions in *K.* is good, without ſaying when or where.

C **A Bond** entred into to the Sheriff, to appear at the next Quarter-Seſſions to be holden for the County of *K.* is good, without ſaying when and where. 5 *W. B. R.*

A Declaration, and doth not ſay, *per nomen A. B. Vic'* how made good by a Replication. 23 H. 6. cap. 10.

D **A Declaration** is brought upon a Bail-bond, and he doth not ſay, *teneri* to the Plaintiff, *per nomen A. B. &c.* The Defendant craves Oyer of the Condition, and pleads the Statute of 23 *H.* 6. *cap.* 10. The Plaintiff replies, That the Bond was taken by the Sheriff by the Name of his Office, *abſque hoc* that it was taken for Eaſe or Favour: And this was held to be a good Replication. 6 *W.* & *M.*

An Action lies againſt a Sheriff for an Executor upon a falſe Return of a *Fi. Fa.*

E **An** Executor brings an Action againſt a Sheriff for a falſe Return of a *Fi. Fa.* in the Teſtator's Life-time, and ſets forth, That he returned leſs than he had levied; and after a Verdict, it was moved in Arreſt of Judgment, That it was a Tort, and *moritur cum perſona*; and that it is not within the Statute *de bonis aſportatis in vita Teſtatoris:* But adjudged, that the Action well lay, and the Plaintiff recovered. *Williams* and *Cray. Vic. Wilts. Paſch.* 7 *W. B. R.* So alſo upon a falſe Return upon a *Capias utlagatum* after Judgment, *tam pro Domino Rege, quam pro* the Plaintiff. *Cro. Jac.* 532. *pl.* 16. 533.

A Sheriff levies Money upon a *Fi. Fa.* and dies, it is a Duty, and his Executors ſhall be chargeable with it.

Note, It is not a Tort but a Duty.

F **A Sheriff** levies Money upon a *Fi. Fa.* and dies; an Action is brought againſt his Executor for the Money: And adjudged, That it lies upon this Diverſity, *viz.* where a Sheriff is chargeable in his Life-time for a perſonal Tort or Miſfeazance, there *Actio moritur cum perſona.* But where he is chargeable for levying of Money, and not paying of it, that is a Duty; and if he dies, his Executors are chargeable as well as himſelf would have been, if living. *Cro. Car.* 539. *pl.* 3. 540.

The old Sheriff continues till the new one is ſworn. 12 Ed. 4. cap. 1. 23 Ed. 4. cap. 6.

G **When** a new Sheriff is choſen, yet the old Sheriff continues Sheriff of the County until the new Sheriff is ſworn. (*Hill.* 22 *Car.* 1. *B. R.*) For the taking of his Oath doth compleat him in his Office;

and before he is ſo compleated, the old Sheriff is in Office: For there muſt not be a Vacancy, leſt there be a Failure of Juſtice for want of a Sheriff.

A **A Man** is in Execution in the Cuſtody of the old Sheriffs, but not turned over to the new Sheriffs; he eſcapes; the old Sheriffs and not the new Sheriffs are chargeable. *Poph.* 85.

Where the old and not the new Sheriff is chargeable.

B **When** one of the Sheriffs of *London* dies, the other cannot act, becauſe he is no Sheriff, but muſt wait 'till another be made; for there muſt be two Sheriffs of *London*, which is a City and County, but they both make but one Sheriff of *Middleſex*, which is only a County. *Show. Rep.* 289.

When one Sheriff of *London* dies, the other cannot act.

C **They** are ſeveral as to Plaints in their reſpective Courts; but as to *Latitats*, &c. but one Sheriff.

They are ſeveral as to Plaints, but not as to Writs.

D **Where** there are two Sheriffs, and one of them is challenged, the *Venire* ſhall go to the other. *Show. Rep.* 329.

Two Sheriffs, one is challenged, the *Venire facias* ſhall go to the other.

E **The** Sheriff ought to have the Cuſtody of the Priſoners, and if the old Sheriff refuſes to deliver over the Gaol to the new Sheriff, the Court will compel him by Rule to do it; becauſe the Cuſtody of the County being committed to the Sheriff by the King, thereby alſo the Cuſtody of the Priſoners is committed to him. *Mich.* 8 *W.* 3. *B. R.* See *Rep.* 72.

The Court may compel the old Sheriff to turn over his Priſoners to the new.

F **A** *Fi. Fa.* was delivered to the Sheriff at Nine of the Clock, and no Warrant was made upon it; and at twelve another was delivered, and a Warrant made upon it, and executed the ſame Day, and it was held good, and took Place of the firſt. *Smalbone verſus Croſs.* 9 *W.*

Where the laſt *Fi. Fa.* delivered to the Sheriff the ſame Day, and firſt executed, ſhall be good.

G **A** *Fi. Fa.* was delivered to the Sheriff of *London*, who made a Warrant upon it, and delivered it to the Plaintiff, who did nothing in it for twenty Days; then came another *Fi. Fa.* upon which a Warrant was made and executed, and the Plaintiff in the firſt *Fi. Fa.* called for a Return of his Writ: But the Court ordered him to give back the Warrant, and then let the Sheriffs return what they pleaſe. 9 *W.* 3.

A Warrant upon a *Fi. Fa.* made, and nothing done in it for twenty Days, then comes another which is executed.

H **If** a *Superſedeas* come to a Sheriff before he hath ſeiſed the Goods, he ſhall ſtop; but after he hath ſeiſed, he may go on, and ſell; and if executed in Part, he may alſo go on *non obſtante* the *Superſedeas*, or his Removal from his Office. 3 *Anna B. R. Cro. El.* 597. *pl.* 2.

If a *Superſedeas* comes before Seiſure, he muſt ſtop: But if he has begun to execute, he may finiſh it.

When the Sheriff ſeiſes the Goods, the Defendant is actually diſcharged, and the Sheriff is become anſwerable.

When the Sheriff ſeiſes the Goods upon a *Fi. Fa.* the Defendant is actually diſcharged, and the Sheriff is anſwerable for the Value that he hath returned. 3 *Annæ B. R.* A

Where the Sheriff ſhall forfeit Iſſues for not ſelling the Goods.

Where Goods are in a Sheriff's Hands *pro defectu emptorum*, it is not ſuch a Fault as that he ſhould forfeit Iſſues: But if he do not ſell between the *Teſte* and Return of the *Diſtringas*, he ſhall then forfeit Iſſues. 3 *Annæ*, *B. R.* B

What the Sheriff muſt return for Iſſues.

Where a Sheriff returns Iſſues, he muſt not return the Value of the Crop upon the Ground, but only the Value of the Land which it might be leaſed at. 3 *Leon.* Caſe 224. C

An Execution is good, though not returned.

If the Sheriff ſells the Goods upon a *Fi. Fa.* it is a good Sale, though he doth not return his Writ. 4 *Leon.* Caſe 44. D

A *Diſtringas* ſhall go to the new Sheriff, to cauſe the old Sheriff to ſell the Goods.

Upon a *Fi. Fa.* the Sheriff returns, that he had ſeiſed Goods of ſuch a Value, *ſed non invenit emptores*, and then he was diſcharged; whereupon a *Diſtringas* went to the new Sheriff againſt the old Sheriff to cauſe him to ſell the Goods. 4 *Leon.* Caſe 44. But upon an Arreſt upon a *Latitat* he muſt return it. *Cro. Car.* 447. E

Where the old Sheriff may ſell the Goods without a *Venditioni exponas*.

A Sheriff ſeiſes Goods upon a *Fi. Fa.* and before Sale he was diſcharged from his Office, yet he may ſell the Goods without a *Venditioni exponas*. *Cro. Jac.* 73. *pl.* 2. F

The Act for preventing of unneceſſary Charge of Sheriffs, and for their Eaſe in paſſing of their Accounts. 13 & 14 Car. 2. cap. 21.

By a Statute made 13 & 14 *Car.* 2. *cap.* 21. *For preventing the unneceſſary Charges of Sheriffs, and Eaſe in paſſing their Accounts*, it is enacted, 'That 'no Sheriff ſhall at any Aſſizes keep any Table for 'any Perſon reſorting to the Aſſizes, ſave only for 'his own Family and Retinue, nor ſhall make or ſend any Preſent to any 'Judge of Aſſize for his Proviſion, nor give any Gratuity to any of his 'Officers or Servants, nor have more than forty, nor under twenty 'Livery-Men, upon Pain of forfeiting 200*l.*' There are ſeveral other Matters in it relating to their Accounts, and paſſing of them; which ſee there. This Act was temporary at firſt, but afterwards made perpetual. 1 *Jac.* 2. *cap.* 17. See the Statute, there are many good Things in it. G

The Sheriff dies in his Office, a Priſoner eſcapes, he may be taken again.

The Sheriff dies in his Office, and before another is ſworn, a Priſoner eſcapes: This is no Eſcape to diſcharge the Priſoner; becauſe upon the Sheriff's Death the Priſoners are all in *Cuſtodia Legis* until there is a new Sheriff, and then he may be taken again whereſoever he is found, becauſe his Eſcape is no Diſcharge from the Plaintiff. 3 *Rep.* 72. H

A **Every** Perſon who ſhall apprehend one or more Highway-men, and ſhall proſecute them till they are convicted, ſhall have from the Sheriff of the County where ſuch Conviction ſhall be, without paying of any Fee, 40 *l.* within one Month after ſuch Conviction, and Demand thereof by Certificate under the Judge's Hand before whom ſuch Conviction was; and if any Diſpute ſhall happen, the Judge's Certificate ſhall direct in what Proportions to be paid; and that the Sheriff in Default of Payment to forfeit double the Sum. 4 & 5 *W.* & *M. cap.* 8.

The 40*l.* to be paid by the Sheriff for every Highway-man taken and convicted.

Penalty for Non-Payment. 4 & 5 **W. & M.** cap. 8.

B **Where** a Man is in the Sheriff's Cuſtody by Proceſs, and another Writ is delivered to him to take the Body of him in Cuſtody, he is preſently in his Cuſtody in Judgment of Law, although not actually arreſted, though it is not properly a *Capias*, but a *Salvo Cuſtodiri facias.* 5 *Rep.* 89. *a.*

A Writ delivered to the Sheriff who hath a Priſoner in his Cuſtody, is a Charge upon him.

C **Caſe** was brought againſt an Under-Sheriff for the not returning of a Writ of Summons: And adjudged, That it lies as well againſt him as his High Sheriff. 1 *Leon.* Caſe 203.

Where an Action lies againſt the *Sub-Vic'* for a Non-feazance.

D **It** was adjudged, That the Statute of 29 *Eliz. cap.* 4. allows a Sheriff 12 *d.* in the Pound for the firſt 100*l.* and 6*d.* in the Pound for every Pound where it exceeds 100 *l.* It was alſo adjudged, That the Proviſo in the Statute, that it ſhould not extend to Cities and Corporations, intended only as to Judgments in their Courts, not to Executions out of the Courts at *Weſtminſter. Cro. Car.* 286. *pl.* 34. 287.

What Fees Sheriffs ſhall have for Executions.

29 **Eliz.** cap. 4.

The Proviſo extends to Executions out of Corporation-Courts, not from the Courts at *Weſtminſter.*

E **If** Proceſs be directed to the Sheriffs of *London,* and one of them dies, the Proceſs is gone, for both make but one Sheriff. *Mod. Caſes in Law and Equity* 304.

London.

F **See** a Sheriff ordered to return his Writ (*aliter* of an Attachment) notwithſtanding an Injunction. *Ibid.* 315.

Injunction.

G **An** Attachment can't iſſue for a Reſcue till the Sheriff has return'd his Writ. *Ibid.* 110, 342.

Reſcue.

H **Where** the Sheriff is indifferent, a Writ is never directed to the Coroners. *Ibid.* 193.

Coroners.

I **The** High-Sheriff returns the Jury, tho' his Under-Sheriff was both Attorney and Bail for the Defendant. *Ibid.* 247.

High-Sheriff returns the Jury.

K **If** any lawful Objection be by Affidavit made to the Sheriff, a ſpecial Jury may be ſtruck by the Maſter, otherwiſe the Court will not ſlip the Sheriff without Conſent of Parties. *Ibid.* 248.

Sheriff to ſtrike the Jury, when by the Maſter without him.

A *Venire* directed to one of two Sheriffs.

Where there are two, and one of them is Party to the Suit, the *Venire facias* may be directed to the other. *Carthew* 214. A

Riot.

Where the Sheriff need not be preſent upon a Conviction for a Riot. *Ibid.* 383. B

Two Executions of the ſame Day.

Where two Executions are delivered to him in the ſame Day, he muſt execute that which is firſt delivered. *Ibid.* 419. C

Elegit.

Where the Sheriff delivers more than a Moiety upon an *Elegit,* 'tis voidable by Writ of Error, or *Audita querela.* *Ibid.* 453. D

Sheriff of *Middleſex.*

Sheriffwick of *Middleſex* was granted to *London* by the King. *Ibid.* 482, 483. E

Bail on an Attachment.

A Sheriff may take Bail on an Attachment of Contempt, but the Proſecutor may refuſe to accept it. *Salk.* 608. F

Sheriff fined and committed.

Where a Sheriff was fined and committed for delivering to an Infant a Writ of Appeal brought by his *Prochein Amie.* *Ibid.* 177. G

Sheriff's Fees.

What Fees are due to the Sheriff on Execution of Writs, and his Duty therein. *Vide* Fees and Execution, and for his Duty in taking Bail, ſee Bail. *Ibid.* 17, 18, 19, *&c.* H

How far Officers of the Court.

A Sheriff is the Officer of *B. R.* in the ſame Manner as Conſtables to Juſtices of the Peace. *Ibid.* 175. I

Where no Action lies againſt him.

No Action lies againſt him for taking inſufficient Bail. 3 *Salk.* 57. K

Bond for Appearance.

Bond given to the Plaintiff himſelf for Appearance, and not to the Sheriff, is good. 3 *Salk.* 75. L

Exemption from the Office of Sheriff.

The Subject cannot be exempted from the Office of Sheriff but by Act of Parliament or the King's Grant. *Ibid.* 134. M

Proceſs to be executed by the Succeſſor.

Where and what Proceſs in one Sheriff's Time may be executed by another ſucceeding Sheriff. *Ibid.* 147. N

Falſe Return.

See of an Action againſt him for a falſe Return of a *Fieri Facias.* *Ibid.* 149. O

Payment of one in Execution.

Where Payment of Money to him by one taken in Execution, is good, where not. *Ibid.* 158. P

Riot.

He muſt be a Party to the Inquiſition for a Riot, and likewiſe in ſetting the Fine. *Ibid.* 317. Q

When to ſell Goods on a *Fi. Fa.*

Where he levies Goods by a *Fieri facias,* he may ſell them tho' he is out of his Office. *Ibid.* 322. R

Action againſt him for Money levied.

If he does not pay the Money ſo levied, an Action of Debt lies againſt him, and againſt his Executors after his Death, becauſe it was a Duty owing by him, and not only a perſonal Wrong. *Ibid.* 323. S

A **Where** he levies more than will ſatisfy the Debt, he may detain it till the Debtor demands it, and where not. 3 *Salk.* 159.

Where Levies were wont to be done.

B **Tho'** he may be a Treſpaſſor in the Execution, yet the Execution ſtands good. *Ibid.* 160.

Execution good tho' the Sheriff a Treſpaſſer.

C **Before** the Statute of *Ed.* 2. he never put his Name to the Return of any Writ. *Ibid.* 314.

Return.

D **If** he return a *Cepi Corpus* and hath not the Body, he ſhall be amerced. *Ibid.*

Cepi Corpus.

E **Where** it is ſuggeſted on the Roll that inſomuch as a Brother of the Defendant was one of the Sheriffs of *London*, that therefore the Coroners might return the Jury, and not denied; the Coroner muſt return the Jury. *Skin.* 102.

Where the Coroner to return the Jury.

F **If** eight only plead to Iſſue, and the *Venire* is awarded to the Sheriff; if after it falls out that the Sheriff is a Defendant, the *Venire* ſhall go to the Coroner, though the Sheriff hath not yet pleaded. *Ibid.* 106.

The like.

G **If** the Sheriff be a Party, or relate to one of the Parties, *&c.* and the *Venire* be awarded to him, it is only Matter of Challenge, which may be waived or releaſed. *Ibid.* 118.

Venire to the Sheriff a Party, only Matter of Challenge.

H **Though** the Sheriff may not do an Act to himſelf, he may do an Act for himſelf. *Ibid.* 119.

Sheriff's Power.

I **An** Attachment granted againſt the Sheriff for not returning Money for *Marſhalſea* and maimed Soldiers; and unleſs the Sheriff make a Return, the Court may take any Perſon of the County into *Withernam.* *Ibid.* 227.

Where any Perſon of the County to be taken as a Pledge.

K **Since** the Statute of 28 *Eliz.* it has always been the Uſage for the Sheriff to take a Fee upon a *Ca. Sa.* for the Trouble which he had in the Execution; and if there be a ſecond Execution, he ſhall have a Fee for that alſo; and an Action will lie for this Fee. And it was ſaid that this Statute is miſtaken in the Printed Books, for the Roll is *An.* 28 *Eliz.* and the Statute is *An.* 29. *Ibid.* 363.

Sheriff's Fees.

L *Vide* the late Acts of 11 *Geo.* 1. *cap.* 21. of **Inſolvent Debtors**; the Statute of 2 *Geo.* 2. *cap.* 22. of **Debtors**, to prevent Vexations upon them by Gaolers; 3 *Geo.* 2. *cap.* 25. of **Juries**; *cap.* 27. of **Debtors**.

Simony.

Simony, what.

Simony is the taking of any Money, Reward, Gift or Profit, directly or indirectly, for the admitting, inſtituting or inducting of any Perſon into any Benefice with Cure of Souls, Dignity, Prebend, or Eccleſiaſtical Living, which, if done, every ſuch Preſentation, Collation, Gift, and every Admiſſion, Inſtitution, Inveſtiture and Induction thereupon, ſhall be void, and the King ſhall collate thereunto for that one Turn; and the Perſon who ſhall take ſuch Money, Gift or Reward, or take any Promiſe, Bond, &c. for the ſame, ſhall forfeit and loſe the double Value of one Year's Profit of ſuch Benefice. 13 Eliz. cap. 6. ſect. 6. **and** 31 Eliz. cap. 6. A

Makes the Benefice void.

The Penalty for the taking of Simony. 13 **Eliz. cap.** 6. 31 **Eliz. cap.** 6.

The Penalty for corruptly reſigning a Benefice with Cure.

The Penalty for corruptly reſigning or exchanging of a Benefice with Cure, is the Loſs of double the Value of the Sum, Reward, *&c.* ſo given, the one Moiety to the King, the other to the Informer. *Ibid. Sect.* 8. B

Simony may be betwixt Strangers.

Simony may be amongſt Strangers by Compact betwixt them, without the Privity of the Incumbent or Patron. *Cro. Car.* 331. *Cro. Jac.* 385, *pl.* 16. C

Or with the Patron's Friend or Wife.

So it is where the Incumbent makes a ſimoniacal Contract with the Friend or Wife of the Patron who knows nothing of it. *Cro. Jac.* 386. *Cro. Jac.* 345. D

The Simoniack ſhall never be preſented to the ſame Benefice again.

The Incumbent who is once preſented, admitted and inſtituted by a ſimoniacal Contract, is diſabled to enjoy that Benefice, although he obtains a Preſentation *de novo* from the King. *Cro. Jac.* 385, 386. E

Where a Reſignation-Bond ſhall be good.
Upon taking of another Benefice.

A Man may bind himſelf to reſign, and it is not unlawful, but may be upon valuable Reaſons without Simony: As to be obliged to reſign if he take a ſecond Benefice. *Cro. Jac.* 249. *Cro. Car.* 180. F

A **Or** if he be Non-Reſident by the Space of ſo many Months. *Cro. Car.* 180.

Or for Non-Reſidency.

B **Or** to reſign upon Requeſt, if the Patron ſhall preſent his Son or Kinſman thereto, when he ſhould be of Age capable to take it. *Ibid.* and *Cro. Jac.* 274. *pl.* 2. where the Book ſays, 'tis good Policy to take ſuch a Bond. 1 *Cro.* 180.

Or to reſign upon Requeſt for a Son, *&c.*

C **Where** a Man agrees to give a Sum of Money to procure him to be preſented to ſuch a Benefice, this is Simony. *Cro. Car.* 330. *pl.* 15. 331.

Or to promiſe to give Money for him who procures a Preſentation.

D **By** an Act made at the firſt Seſſion of the Parliament 1 *W. & M. cap.* 16. **it is enacted**, That after the Death of the Party ſimoniacally promoted, the Offence of *Simony* ſhall neither by Way of Title in Pleading or in Evidence to a Jury be alledged or pleaded to the Prejudice of any other Patron innocent of Simony, or of his Clerk, upon Pretence of Lapſe to the Crown, Metropolitan, or otherwiſe, unleſs the Simoniack or his Patron was convicted of ſuch Offence at the Common Law, or ſome Eccleſiaſtical Court in the Life-time of the Simoniack.

The Simoniacal Promotion of one Parſon ſhall not after his Death prejudice another.

1 **W. & M. Seſſ.** 1. cap. 16.

E **All** Leaſes made by ſuch Simoniack for valuable Conſiderations to any Perſon not having Notice of ſuch Simony ſhall be good in Law.

Leaſes for good Conſideration without Notice of the Simony, ſhall be good.

F **The** Statute inflicts a Penalty by Forfeiture, but doth not declare the Contracts void, but yet ſuch Contracts being againſt Law, are always held void. *Carthew* 252.

The Effect of the Statute.

G **What** held Simony in ſelling a Curacy, and taking Money to admit Perſons into Holy Orders. *Ibid.* 484.

What held Simony.

H **Sale** of the Advowſon, with a Covenant to preſent ſuch a Perſon as the Bargainee ſhall nominate, the Church being at that Time full of an Incumbent by Uſurpation, and a *Quare Impedit* then pending to remove him; held Simony. *Skin.* 90.

The like.

Simul cum, See **Actions.**
Treſpaſs.

Slander.

Slander.

See {Actions.
Words.

Slander, what.

A **Slander is the defaming of a Man in his Reputation, Trade or Livelihood.**

Two joint Traders cannot bring a joint Action for Words.

The Damages of one is not the Damages of the other.

B **The** Defendant ſaid of two joint Traders, *They are ſhabby Fellows, not worth a Groat*; and they joined in this Action. *Curia.* This Action will not lie, becauſe the Damages of one are not the Damages of the other. *Trin.* 34 *Car. B. R.*

Words which do undervalue or diſparage any one in his Trade are actionable.

C **Words** which do undervalue or diſparage a Man in his Trade, are actionable: Becauſe in many Trades Men live upon their Reputation, and if you take away that, you take away his Livelihood. 6 *W. B. R.*

Words which touch a Man in his Office or Life are actionable.

D **Where** a Man is touch'd in the Duty of his Office, or in the Courſe of his Life, an Action lies, although otherwiſe the Words are not actionable. 1 *Leon. Caſe* 469.

Action lies for the Word *Murder*, though no ſuch Perſon.

E **If** a Man ſays, that *J. S.* murdered *A. B.* tho' there never was ſuch a Man as *A. B.* an Action lies. 2 *Leon. Caſe* 120. See Title **Words**, and *Cro. Eliz.* 569.

How it lies for ſlandering of a Title.

F **In** an Action for ſlandering of a Title, there is no Difference, whether the Words be ſpoken to the Party or Stranger; for in both Caſes the Plaintiff's Title is ſlandered. 2 *Leon. Caſe* 147.

Any Man may ſpeak for his own Title, not for a Stranger's.

G **It** is lawful for any Man to ſpeak in Maintenance of his own Title, but not to countenance the Title of a Stranger. *Cro. Jac.* 164.

What makes an Action for ſlandering of a Title, and what not.

H **Without** ſome ſpecial Cauſe ſhewn, as that he was in Communication to ſell, or that he was hindred in the Sale, or without ſhewing a ſpecial Prejudice, an Action will not lie for ſlandering of a Title. *Cro. Jac.* 485. *Cro. Car.* 140. *pl.* 16. 141.

A **Slander** ought to be expreſt, and not taken by Intendment or Implication. *Cro. Car.* 317. *pl.* 14.

Slander ought not to be taken by Implication.

B **Where** Words are ſpoken of the Wife of a Man who keeps an Alehouſe, *viz.* to ſay, *Thou keepeſt a Bawdy-houſe*, if it be intended thoſe Words ſhall keep the Cuſtomers from coming to his Houſe, the Action muſt be brought by the Huſband only. *Cro. Car.* 329. *pl.* 13.

Where Words are ſpoken of the Wife, Huſband only muſt bring the Action.

C **If** a Man ſays that he hath a Title or Eſtate to Land, although he hath no Title, no Action lies. *Moor, Caſe* 558.

An Action lies not againſt a Man for ſaying that he hath a Title, when he hath none.

D **Where** the firſt Words are plainly actionable, the Effect of them ſhall not be taken away by ſubſequent ambiguous Words; for when ſubſequent Words ſhould qualify precedent Words, they ought to carry in them a ſtrong Intendment, that they were ſpoken in ſuch Senſe as was not actionable. *Aleyn* 31.

How it ſhould be when ſubſequent Words qualify precedent.

E **The** exhibiting of a ſcandalous Bill to the King is not any Cauſe of Action; for the King is the Head and Fountain of Juſtice, and therefore it is lawful for all his Subjects to make their Complaints to him: But if a Subject will, after the Bill exhibited, divulge the Matter in it to the Diſgrace and Diſcredit of the Perſon intended, an Action well lies. 3 *Leon. Caſe* 213.

Where the exhibiting of a ſcandalous Bill to the King is actionable, and where not.

F **It** is no Diſcredit to a Phyſician to ſay that he killed one with Phyſick, for it may be without any Fault in him, for they miſtake oft-times the Diſeaſes in their own Bodies, much more in others; and apply wrong Medicines, which may occaſion the Patient's Death, and yet no Diſcredit to them, unleſs it be ſaid *ſcienter & voluntarie*, &c. *Cro. El.* 620. *pl.* 9.

Where Words of a Phyſician are actionable, and where not.

G **In** an Action for the Word *Baſtard*, how to lay the Declaration. *Et per Cur.* Although the Plaintiff hath not a preſent Title (there being ſome Perſons before him) yet if it appears that he hath but a Poſſibility to inherit, an Action lies. *Cro. Jac.* 213. *pl.* 5.

For the Word *Baſtard*, how to lay it. Tho' but a Poſſibility to inherit, it lies.

H **In** a Declaration the Plaintiff ſaid, That he intended to aſſure Part of his Land upon his Son; and becauſe that he was not in a Communication to aſſure or make Leaſes, but only intended, which might be ſecret, the Action did not lie. *Cro. Jac.* 397. *pl.* 3.

Intending to aſſure, or leaſe, will not bear an Action.

I *Shall* E. *his Wife ſit above my Wife? He is a Baſtard.* And ſet forth, That he had 200 *l. per Ann.* and *per* Diſcent, *quorum pretextu* he was ſcandalized in his Eſtate: Adjudged actionable.

The Word *Baſtard* actionable.

K **It** was ſaid by *Holt* Chief Juſtice, That he hath known it to be a ſet Rule, That all Words ſtand upon their own Feet; and he ſaid, That for his Part, wherever Words did tend to take away a Man's Reputation, he

My Lord *Holt's* Opinion of Actions for Words.

would encourage Actions for them; becauſe ſo doing would contribute to the Preſervation of the Peace. *Mod. Caſes* 24.

How Actions for Words ought to be adjudged.

A **Actions** of Slander are brought for the Diſcredit which they bring, and therefore ought to be adjudged according to the Credit of the Perſon of whom they are ſpoken. *Cro. Eliz.* 192.

It lies not for the Word *Bawd*, but for the Word *Bawdy-houſe* it lies, and why.

B **It** will not lie for the Word *Bawd*; becauſe it is within the Juriſdiction of the Spiritual Court; but for ſaying, *You keep a Bawdy-houſe*, an Action lies, it being indictable. *Cro. Car.* 229. *pl.* 9. *Cro. Car.* 261. *pl.* 5.

Words actionable.

C **For** ſaying *C. B.* is the Man who kill'd my Husband, an Action lies. *Mod. Caſes in Law and Equity* 24.

The like.

D **So**, *M.* ſtole a Sheep of his, *Innuendo*, the Defendant's, and it is not the firſt he ſtole by a hundred. *Ibid.* 30.

The like.

E **So**, he is a Raſcal, Villain, Liar, *&c.* ſpoken of a Juſtice of Peace, are actionable. *Ibid.* 270.

The like.

F **So** an Action lies for repreſenting a Tavern to be a Bawdy-houſe. *Ibid.* 215.

The like.

G **So**, he has the Pretender's Picture in his Room, and I ſaw him drink his Health, *&c.* *Ibid.* 283.

The like.

H **So** for ſaying *P.* hath ſtole my Hens, *&c.* *Ibid.* 371.

Not actionable.

I **But** not for ſaying, *I never came home and pox'd my Wife*, becauſe meerly negative. *Ibid.* 290.

Juſtice of Peace.

K **Slander** of a Juſtice of Peace in the Execution of his Office is indictable, or an Information lies. *Comb.* 46, 65, 66.

The like.

L **As** calling him Buffle-headed Fellow, ignorant Fellow, and has not done Juſtice, *&c.* *Ibid.*

The like.

M **And** *per* Ch. J. all Actions for ſlandering a Juſtice of Peace in his Office may be turned into Indictment. *Ibid.* 46, 13.

The like.

N **And** by ſome an Information lies for Words of a Juſtice where an Action will not. *Ibid.* 66.

The like.

O *Quære*, If an Action lies for Words of a Juſtice, Rogue and buſy Knave for ſearching after him and other honeſt Men of his Sort, and he would make him give Satisfaction for plundering. *Ibid.* 72.

Words actionable.

P **Action** lies for theſe Words, *You are a Rogue, and robbed the Hockley Butcher*, &c. *Ibid.* 247.

The like.

Q **So** for, You are a Rogue, and broke a Shop at *Oxford*, and your Grandfather brought over 30 *l.* to make it up. *Ibid.* 232.

The like.

R **So** for, You are a Break-lock and Pick-lock, and keep Piſtols in your Houſe, and I will arraign you and have you whipp'd, *&c.* for it. *Ibid.* 52.

A **So** for ſaying of a Merchant, He is a pitiful Fellow, and not able to pay his Debts, without Special Signification, or Damage. *Comber.* 292. Words of a Merchant.

B *Quære*, If it lies for ſaying of a Farmer, He owes more than he is worth, and is broke. *Ibid.* 28. Of a Farmer.

C **It** lies not for a Butcher (on a *Colliquium*) of him and the Quarter of a Cow for theſe Words, The Cow, of which this is part, dy'd of Calving. *Per quod*, he loſt his Cuſtomers, *ſed Quære. Ibid.* 161. Of a Butcher.

D **But** if laid that he had expoſed the Quarter, *&c.* to ſale, and by Reaſon of thoſe Words loſt the Sale thereof, Action lies. *Ibid.* The like.

E **It** lies not for ſaying, You are a Witch, and I will make you ſuffer for a Witch. *Ibid.* 246. Witchcraft.

F **For** calling a Man Cuckold, nor for calling a Woman Whore, without a ſpecial Damage. *Quære. Ibid.* 26, 28, 29. Cuckold and Whore.

G **Nor** for ſaying ſhe hath had a Baſtard, without ſhewing ſome temporal Loſs, as Marriage, *&c. Vide Ibid.* and 391, 392. Baſtardy.

H **But** the Word Whore is actionable in *London* by Cuſtom, and after a *Habeas Corpus* a *Procedendo* was granted. *Ibid.* 138, 39. Whore.

I **But** it ought to appear to be in *London* by the Declaration returned, and if removed before Declaration, *Quære* if not by Affidavit. *Ibid.* In *London*.

K **See** the Force and Uſe of an *Innuendo* in laying Actions of Slander. *Ibid.* 72, 460, 461. *Innuendo.*

L **Where** Words ſpoken, and charging the Plaintiff with Capital Offences, are actionable. 3 *Salk.* 325. Capital Offences.

M **Where** ſuch Words are not actionable. *Ibid.* 326.

N **Where** Words ſpoken of Tradeſmen are actionable. *Ibid.* Of a Tradeſman.

O **Where** Words ſpoken of Tradeſmen are not actionable. *Ibid.* 327.

P **Where** Words ſpoken of Men of Profeſſions are actionable. *Ibid.* 328. Of Profeſſions.

Q **Where** ſuch Words are not actionable. *Ibid.*

would encourage Actions for them; becauſe ſo doing would contribute to the Preſervation of the Peace. *Mod. Caſes* 24.

How Actions for Words ought to be adjudged.

Actions of Slander are brought for the Diſcredit which they bring, and therefore ought to be adjudged according to the Credit of the Perſon of whom they are ſpoken. *Cro. Eliz.* 192. A

It lies not for the Word *Bawd*, but for the Word *Bawdy-houſe* it lies, and why.

It will not lie for the Word *Bawd*; becauſe it is within the Juriſdiction of the Spiritual Court; but for ſaying, *You keep a Bawdy-houſe*, an Action lies, it being indictable. *Cro. Car.* 229. *pl.* 9. *Cro. Car.* 261. *pl.* 5. B

Words actionable.

For ſaying *C. B.* is the Man who kill'd my Husband, an Action lies. *Mod. Caſes in Law and Equity* 24. C

The like.

So, *M.* ſtole a Sheep of his, *Innuendo*, the Defendant's, and it is not the firſt he ſtole by a hundred. *Ibid.* 30. D

The like.

So, he is a Raſcal, Villain, Liar, *&c.* ſpoken of a Juſtice of Peace, are actionable. *Ibid.* 270. E

The like.

So an Action lies for repreſenting a Tavern to be a Bawdy-houſe. *Ibid.* 215. F

The like.

So, he has the Pretender's Picture in his Room, and I ſaw him drink his Health, *&c. Ibid.* 283. G

The like.

So for ſaying *P.* hath ſtole my Hens, *&c. Ibid.* 371. H

Not actionable.

But not for ſaying, *I never came home and pox'd my Wife*, becauſe meerly negative. *Ibid.* 290. I

Juſtice of Peace.

Slander of a Juſtice of Peace in the Execution of his Office is indictable, or an Information lies. *Comb.* 46, 65, 66. K

The like.

As calling him Buffle-headed Fellow, ignorant Fellow, and has not done Juſtice, *&c. Ibid.* L

The like.

And *per* Ch. J. all Actions for ſlandering a Juſtice of Peace in his Office may be turned into Indictment. *Ibid.* 46, 13. M

The like.

And by ſome an Information lies for Words of a Juſtice where an Action will not. *Ibid.* 66. N

The like.

Quære, If an Action lies for Words of a Juſtice, Rogue and buſy Knave for ſearching after him and other honeſt Men of his Sort, and he would make him give Satisfaction for plundering. *Ibid.* 72. O

Words actionable.

Action lies for theſe Words, *You are a Rogue, and robbed the Hockley Butcher*, &c. *Ibid.* 247. P

The like.

So for, You are a Rogue, and broke a Shop at *Oxford*, and your Grandfather brought over 30 *l.* to make it up. *Ibid.* 232. Q

The like.

So for, You are a Break-lock and Pick-lock, and keep Piſtols in your Houſe, and I will arraign you and have you whipp'd, *&c.* for it. *Ibid.* 52. R

Words of a Merchant.

A **So** for ſaying of a Merchant, He is a pitiful Fellow, and not able to pay his Debts, without Special Signification, or Damage. *Comber.* 292.

Of a Farmer.

B *Quære*, If it lies for ſaying of a Farmer, He owes more than he is worth, and is broke. *Ibid.* 28.

Of a Butcher.

C **It** lies not for a Butcher (on a *Colliquium*) of him and the Quarter of a Cow for theſe Words, The Cow, of which this is part, dy'd of Calving. *Per quod*, he loſt his Cuſtomers, *ſed Quære. Ibid.* 161.

The like.

D **But** if laid that he had expoſed the Quarter, *&c.* to ſale, and by Reaſon of thoſe Words loſt the Sale thereof, Action lies. *Ibid.*

Witchcraft.

E **It** lies not for ſaying, You are a Witch, and I will make you ſuffer for a Witch. *Ibid.* 246.

Cuckold and Whore.

F **For** calling a Man Cuckold, nor for calling a Woman Whore, without a ſpecial Damage. *Quære. Ibid.* 26, 28, 29.

Baſtardy.

G **Nor** for ſaying ſhe hath had a Baſtard, without ſhewing ſome temporal Loſs, as Marriage, *&c. Vide Ibid.* and 391, 392.

Whore.

H **But** the Word Whore is actionable in *London* by Cuſtom, and after a *Habeas Corpus* a *Procedendo* was granted. *Ibid.* 138, 39.

In *London*.

I **But** it ought to appear to be in *London* by the Declaration returned, and if removed before Declaration, *Quære* if not by Affidavit. *Ibid.*

Innuendo.

K **See** the Force and Uſe of an *Innuendo* in laying Actions of Slander. *Ibid.* 72, 460, 461.

Capital Offences.

L **Where** Words ſpoken, and charging the Plaintiff with Capital Offences, are actionable. 3 *Salk.* 325.

M **Where** ſuch Words are not actionable. *Ibid.* 326.

Of a Tradeſman.

N **Where** Words ſpoken of Tradeſmen are actionable. *Ibid.*

O **Where** Words ſpoken of Tradeſmen are not actionable. *Ibid.* 327.

Of Profeſſions.

P **Where** Words ſpoken of Men of Profeſſions are actionable. *Ibid.* 328.

Q **Where** ſuch Words are not actionable. *Ibid.*

Son

Son Aſſault.

Son Aſſault, what.

SON Aſſault is a Juſtification in an Action of A Aſſault and Battery; becauſe the Plaintiff made the firſt Aſſault, and what the Defendant did was in his own Defence.

What Battery may be juſtified upon *Son Aſſault*.

An outrageous Battery cannot be juſtified upon B *Son Aſſault* pleaded; but if the Battery at firſt was but moderate, and afterwards by Degrees comes to be outrageous, even to a Maihem, there it may be juſtified; becauſe it came to be outrageous, not intentionally, but by Accident.

The Defendant is in the Nature of a Plaintiff.

In an Action of Aſſault and Battery, the De- C fendant's Counſel open the Cauſe, and his Witneſſes are firſt called to prove his Plea.

Spiritual Courts.

What Power theſe Courts have.

THOSE Courts have Juriſdiction in D Cauſes Matrimonial, and for Probate of Wills for Goods, and granting of Adminiſtrations; and for Tithes, where there is no Modus. See for their Juriſdictions Articuli Cleri, 9 E. 2. made at Lincoln.

What Matters belong to the Spiritual Court, and what not. *Stat. de Circumſpecte agatis.*

What Matters belong to the Juriſdiction of the E Spiritual Court, and what not, and where no Prohibition lies. See *Stat. de Circumſpecte agatis.*

No Perſon to be cited to anſwer out of his Dioceſe. 23 H. 8. *cap.* 9.

No Perſon ſhall be cited to appear out of the F Dioceſe where he dwells but in certain Caſes, which ſee in the Stat. of 23 *H.* 8. *cap.* 9. with the Penalty for doing of it.

Where the Spiritual Courts have Conuſance, the Courts of Law credit their Sentences.

Where the Spiritual Courts have Conuſance, the G Courts of Law ought as well to give Credit to their Sentences, as they do to their Judgments of the Courts of Law. 7 *Rep.* 43. *b.*

A **Where** a Cauſe is originally Spiritual, yet if afterwards in the Spiritual Court they are to try a Matter of Temporal Conuſance, a Prohibition lies. 7 *Rep.* 44. *b.*

Altho' Spiritual, yet if they meddle with Temporal, Prohibition lies.

B **Where** the Spiritual Court ſhall have a Juriſdiction, all the Cauſe ought to be Spiritual; but if the Spirituality be mix'd with the Temporality, and the Spiritual Courts proceed to try the Temporality, they ſhall be prohibited. 7 *Rep.* 44. *a. b.*

Where all muſt be Spiritual, and where not.

C **The** Queſtion was, Whether the Parſon or Vicar ſhould have Tithes, *&c.* The Farmer preſcribed to pay a *Modus* to the Vicar, and a Conſultation was granted; becauſe it was triable in the Eccleſiaſtical Court; for both Parties, as well Parſon as Vicar, are Spiritual Perſons, and the *Modus* is not in Queſtion, but *cui ſolvendum.* 1 *Leon.* 94. *Caſe* 121.

The Spiritual Court hath Conuſance where both are Spiritual Perſons.

D **Where** the Right of Tithes between the Parſon and Vicar comes in Queſtion, this is meerly triable in the Spiritual Court. *Cro. Eliz.* 306. *pl.* 7.

Where the Right of Tithes between the Parſon and Vicar is triable.

E **Where** a Suit is brought for ſaying of Words, *vel his ſimilia*, although it is not good at Common Law, yet the Spiritual Court uſing that Way, the Common Law ſhall not controul it. *Cro. Jac.* 159. *pl.* 12.

Actions for Words in the Spiritual Court differ from Actions for Words at the Common Law.

F **By** the Civil Law the Death of the Plaintiff or Defendant doth not abate the Libel, but they have a Reviver. *Cro. Jac.* 489. *pl.* 20.

Death of the Plaintiff or Defendant doth not abate the Libel, but there ſhall be a Reviver.

G **A Feme** may ſue in the Spiritual Court for Defamation; but if Coſts be adjudged, the Baron may releaſe, but not the Suit; becauſe it is *pro Reformatione Morum.* *Cro. Car.* 222. *pl.* 9.

A Feme may ſue in the Spiritual Court for Defamation, and her Husband may releaſe the Coſts, but not the Suit.

H **A Parſon** may ſue in the Spiritual Court for a *Modus*, but if it be denied, they cannot proceed any further; becauſe they cannot try Matters of Preſcription there. *Latch* 210.

A Parſon may ſue for a *Modus* in the Spiritual Court; but if it be denied, how to be.

They cannot try a Preſcription.

I **Upon** a Suit for Tithes the Defendant claimed by a Leaſe proved but by one Witneſs, which was not allowed: Alſo a Prohibition was denied; for there is a Rule in the Regiſter, That where *cognitio principalis* is, there *cognitio acceſſoria* neceſſarily follows. *Cro. Jac.* 269. *pl.* See Title **Prohibition.**

Where a Prohibition was denied, where there was but one Witneſs.

K **There** ought not to be a Suit in the Spiritual Courts for Words which are actionable at Law; but a Prohibition may be granted. *Cro. Car.* 456.

Words which are actionable are ſuable only at Law.

Statute.

See
- **Acts of Parliament and Statutes.**
- **Copyholds.**
- **Coſts.**
- **Damages.**
- **Parliament.**
- **Remainder.**

Acts of Parliament and Statutes, what.

Acts of Parliament or Statutes are poſitive Laws, which conſiſt of two Parts, viz. of the Words of the Act, and of the Senſe thereof; and they both joined together make the Law. A

Four Things to be obſerved in the Expoſition of Statutes.

In the Expoſition of Statutes theſe four Things are to be obſerved. B

1. **What** was the Common Law before the making of the Statute. C
2. **What** was the Miſchief and Defect which the Common Law did not provide for.
3. **What** Remedy the Parliament hath provided to cure this Defect in the Common Law.
4. **The** true Reaſon of the Remedy. 3 *Rep.* 7. *b.*

How to take Advantage of a Statute in pleading.

He that will take Advantage of a Statute by pleading it, muſt ſhew in his Pleading that he is within ſome Proviſo of that Statute, if the Statute which he pleads be a particular Statute, and not a general Statute. 21 *Car. B. R.* 25 *H.* 7. *fol.* 1. D

Where a Statute gives a Remedy, it ſhall be preſumed there was none before.

Where a Statute gives a Remedy for any Thing, it ſhall be preſumed there was no Remedy before at the Common Law. *Raym.* 191. E

General Words do not extend to an Eſtate-tail.

General Words in an Act of Parliament do not comprehend an Eſtate-tail. *Id.* 322. F

Rules to conſtrue Statutes differ from thoſe of the Common Law.

That the Rules to conſtrue Acts of Parliament are different from the ſtrict Rules of Common Law. *Id.* 355, 356. G

A **And** the relative Words in the Act of Parliament will make a Thing paſs as well as if it had been particularly expreſſed. *Id.* 54, 55.

And relative Words will make a Thing paſs as if it had been particularly expreſs'd.

B **Where** a Statute gives a Penalty to the King's Majeſty, without ſaying his Heirs and Succeſſors; yet his Succeſſor may ſue for a Breach in his own Time; for the Word *King* is *nomen collectivum*, and includes all his Succeſſors, for he never dies in reſpect of his Politick Capacity.

A Statute gives a Penalty to the King: His Heirs and Succeſſors are included.

C **The** Statute of 1 *Jac.* 1. which concerns Attorneys and Solicitors, doth not extend to ſpecial Retainers of Attorneys and Solicitors. (*Mic.* 23 *Car. B. R.*) For that Statute is a general Statute, and not a particular.

The Stat. of 1 **Jac.** 1. extends not to ſpecial Retainers.

D **If** an Iſſue be joined upon a collateral Point ariſing in the Pleading, and no Place is alledged whence the *Venue* may come, this Fault is helped after a Verdict, by the Statute of *Jeofails*; but if the Iſſue be not joined upon a collateral Matter, it is not helped by the Statute, if no Place be alledged; for the Statute intended not ſuch extraordinary Iſſue joined upon collateral Points to the Statute. See **Jeofails.**

Iſſue joined in a collateral Point in the Pleading, and no Place alledged for the *Venue* to come from, is help'd after Verdict by the Statute of *Jeofails*.

E **A Statute** which is made only in Affirmance of the Common Law, that is, that doth not enact any new Thing, but doth only enact that which was provided for by the Common Law before the Act made, though it did not ſo plainly appear, is nevertheleſs a Statute, and may be pleaded as a Statute, although the Defendant hath a plea at the Common Law alſo. (*Paſch.* 23 *Car. B. R.*) For it enacts nothing contrary to the Common Law, and may therefore well ſtand with it.

A Statute made only in Affirmance of the Common Law may be pleaded as a Statute.

F **When** a Statute is made at a Seſſion, *&c.* held by Prorogation, the moſt brief and ſure Way is to plead *Quod ad Seſſion. Parliamenti, &c.* 1 *Lutw.* 140.

How to plead a Statute made at a Seſſion held by Prorogation.

G **If** a Statute be made to continue to ſuch a Day, and then another Act is made before the Expiration of the firſt, to continue it always, *&c.* it is all one as if that firſt Act had been perpetual at the firſt. *Id.* 221.

What ſhall be ſaid to be a perpetual Act.

H **Where** a Statute ſhall be taken by Equity, ſo that an Action ſhall not be barred by the Statute of Limitations. 21 *Jac.* 1. *cap.* 16. *Id.* 260.

Where a Statute ſhall be taken by Equity ſo as not to bar an Action.

I **The** antient Statutes were made upon the Petition of the Commons in Parliament unto the King; in which Petition was ſet forth that which they did deſire of the King might be enacted and paſſed, not by Bills prepared, as now they do. *Paſch.* 23 *Car. B. R.*

How ancient Statutes were made.

K **It** was held by this Court, 5 *Car.* in *Simons* Caſe, that the Statute of 1 *Mariæ* was repealed by the Statute of 1 *Eliz.* But *Quære*, For it was doubted

1 **M.** not repealed by 1 **Eliz.**

by

by the Court, whether it be repealed in the whole, or in Part only. (*Mich.* 23 *Car. B. R.*) Compare the Statutes.

Statute of 1 **Jac.** 1. of Tanners is a general Law.

That the Statute of 1 *Jac.* 1. *cap.* 22. concerning Tanners is a general Law. 2 *Lutw.* 1410. See *eund.* 1548. A

Where to recite a Statute in the Writ or Count.

Where a Statute ought to be recited in the Writ or Count. *Id.* B

Where a Statute gives an Action in any Court of Record, the Courts of *Weſtminſter* only are intended.

Where an Act of Parliament gives an Action to be brought in any of his Majeſty's Courts of Record, this ſhall be intended Courts of Record at *Weſtminſter*, and not inferior Courts of Record. C

Where the Miſrecital of a Statute in pleading is help'd by the Statute of *Jeofails.*

The Miſrecital of a Statute in pleading a Thing which doth not concern the Ground of the Action which is brought upon the Statute, is helped by the Statute of *Jeofails.* (*Trin.* 1650. *B. S.*) See before, Title **Pleadings,** and ſee *Raym.* 191. Miſrecital of a Statute vitiates the Count. D

Difference when the Action is grounded upon a Statute, and concludes *contra formam*, &c. or *contra formam Statuti in hujuſmodi*, &c.

There is a Difference when the Action or Information is grounded on an Act of Parliament, and the Concluſion is *contra formam Statuti præd.* There the Action or Information is not good if the Statute be miſrecited; but if the Concluſion be *contra formam Statuti in hujuſmodi caſu edit. & proviſ.* there it may be good notwithſtanding the Miſrecital. *Id.* 192. E

Where an Action is brought on a general Statute, the Plaintiff need not ſet it forth.

Where an Action is brought upon a general Statute, the Plaintiff need not in a Declaration ſet forth the Statute at large, but only to ſet forth a Breach made by the Defendant, and then conclude *contra formam Statuti in hujuſmodi caſu edit. & proviſ.* without ſaying when or where the Statute was made. F

Penal Statute not extended to Equity, but ſhall be expounded according to the true Meaning of it.

Although a Penal Statute ſhall not be extended to Equity in the Expoſition of it, yet it ſhall be ſo expounded, that the true Intent and Meaning of it may be known. (*Mich.* 1650. *B. S.*) For if the former ſhould be, the Expoſition would be too large and arbitrary; and if the latter ſhould not be, the Expoſition would be too narrow, and would extenuate the Force of the Statute, and hinder the true Intent and Meaning thereof. G

The Reaſon of the Common Law is a good Light to the Conſtruction of a Statute.

In the Conſtruction of Statutes, the Reaſon of the Common Law gives great Light; and the Judges, as much as may be, follow the Rule thereof. 2 *Inſt.* 301. H

How to expound a Statute made to remedy a Miſchief.

Where a Miſchief is to be remedied by a Statute, the Remedy in the Expoſition of the Statute is to be applied according as the Miſchief doth require. 2 *Leon.* Caſe 114. I

2

Judges

A **Judges** have always expounded general Statutes, according to the Rule of the Common Law founded upon the Perfection of Reaſon. 3 *Rep.* 13. *b.*

How general Statutes are to be expounded.

B **Where** an Act of Parliament is dubious, long Uſage is a juſt *Medium* to expound it by; and the Meaning of Things ſpoken and written, muſt be as hath been conſtantly received by common Acceptation. *Vaugh.* 169.

How to conſtrue a dubious Act.

C **But** where Uſage is againſt the obvious Meaning of an Act, by the vulgar and common Acceptation of Words, than it is rather an Oppreſſion, than an Expoſition of the Act. *Vaugh.* 170.

How it is where Uſage is againſt the Meaning of the Act.

D **When** an Act of Parliament alters the Common Law, the Meaning ſhall not be reſtrained beyond the Words, except in Caſes of publick Utility, when the End of the Act appears to be larger than the Words themſelves. *Vaugh.* 179.

How it is when an Act alters the Common Law.

E **When** the Words of a Statute extend not to an Inconvenience rarely happening, but doth to thoſe which often happen, it is good Reaſon not to ſtrain the Words farther than they will reach, by ſaying, That it is *Caſus omiſſus*, and that the Law intended *quæ frequentius accidunt.* Vaugh. 373.

How it is where the Words extend not to an Inconvenience rarely happening.

F **But** where the Words do extend to an Inconvenience ſeldom happening, there it ſhall extend to it, as well as if it happens more frequently. *Ibid.*

G **An** Act of Parliament which generally prohibits a Thing upon a Penalty which is popular, or only given to the King, may be inconvenient to divers particular Perſons, in reſpect of Perſon, Time, Place, *&c.* For this Cauſe the Law hath given Power to the King to diſpenſe. *Vaugh.* 347.

Where the Law gives the King a Power to diſpenſe with an Act of Parliament

H **Statutes** which are made to puniſh great Offenders, and to give Increaſe of Puniſhments beyond the Puniſhment of the Common Law, are Penal, and ſhall not be extended to Equity: But the Words may be conſtrued beneficially, according to the Intent of the Makers; but Things out of the Words, ſhall not be taken by Equity. *Partridge* againſt *Strange.* 1 *Plow.* 86. *b.*

What are Penal Statutes, and what not.

I **It** is a Rule in Law, That whereſoever a Writ doth recite a Statute, there the Statute doth introduce a new Law. 2 *Inſt.* 121.

Where a Statute doth introduce a new Law.

K **Some** Statutes are general, and ſome are ſpecial: They are called general from the *Genus*, and ſpecial from the *Species*. Now as for Inſtance, the whole Spiritualty is the *Genus*; but a Biſhop, Dean and Chapter, *&c.* is the *Species:* Therefore Statutes which concern all the Clergy, are the general Laws; but theſe which concern Biſhops are ſpecial. Alſo the Word *Office* is the *Genus*; but the Sheriff, Prothonotary, *&c.* is the *Species:* Alſo the Word *Myſtery* or *Trade* is the *Genus*, but the Trade of a *Grocer*, &c. is the *Species*, &c. See 4 *Rep.* 76.

Some Statutes general, and ſome ſpecial; and why ſo called.

Judges are bound to take Notice of all general Statutes, though not pleaded, but not of ſpecial Statutes. But muſt take Notice of all Parliaments and their Seſſions.

A **Note**, The Judges are bound to take Notice of all general Statutes, altho' they are not pleaded; but of ſpecial or particular Statutes, they are not. 4 *Rep.* 76. *a. b.* Yet although an Act of Parliament be a private Act, it is ſaid the Judges are to take Notice judicially of all Parliaments and their Seſſions. *Raym.* 191.

The Miſrecital of a general Act which need not to be recited, makes it ill.

B **If** a general Act be recited where it need not, yet if it be miſrecited, it makes it ill. *Cro. Car.* 232. *pl.* 14.

13 **Eliz. cap.** 10.
18 **Eliz. cap.** 11.
Concerning Dean and Chapter's Leaſes, are general Laws.

C **The** Statute of 13 *Eliz. cap.* 10. and 18 *Eliz. cap.* 11. concerning Leaſes made by Dean and Chapters, and other Eccleſiaſtical Perſons, are general Laws, of which the Court ought to take Notice, though not found by the Jury. 4 *Rep.* 120. *b.*

Not ſafe to recite a general Law, but only to ſay, *contra formam Statut'* he did ſuch a Thing.

D **Note**, It is not Policy to recite a publick Statute in Pleadings or Indictments; for the Recital is not neceſſary, and the Miſrecital is fatal: And therefore the ſure Way is only to ſay, *contra formam Statut'* ſhort, without ſaying *Statuti* or *Statutorum*. See 4 *Rep.* 48. *a.*

The Plaintiff need not ſet forth more than makes for him.
The Defendant may plead the Reſidue.
A Rule for reciting of Statutes.

E **Where** the Plaintiff recites ſo much of a Statute as makes for his Purpoſe, the Defendant may plead the Reſidue if he will. *Cro. Jac.* 140. It is a Rule, That it is ſufficient for any one to recite ſo much as makes for his Purpoſe. *Jones* 50.

All Statutes which concern the King, are general Laws.

F **All** Statutes which concern the King are general Statutes, and the Judges are obliged to take Notice of them without pleading.

By what Words in a Statute the King ſhall be reſtrained.

G **Where** there are general negative Words in a Statute, the King ſhall never be reſtrained by them, unleſs particularly named. *Cro. Eliz.* 542. *pl.* 9.

Where the Statute gives a Forfeiture generally to the King.

H **Where** a Statute gives a Forfeiture generally, it is intended for the King; yet when the Forfeiture is a Prejudice to any particular Perſon, this Perſon ſhall have the Forfeiture. 3 *Lev.* 290.

Where any Thing is prohibited by a Statute, and no Penalty appointed, yet an Indictment lies.
Or an Action *qui tam*, &c.

I **In** every Caſe where a Statute prohibits any Thing, and doth not limit a Penalty, the Party offending therein may be indicted for a Contempt againſt the Statute. *Cro. Eliz.* 655. Or an Action lies for doing againſt the Statute; but that muſt be brought, *tam pro Domino Rege quam pro ſeipſo*; becauſe there muſt be a Fine paid to the King. *Cro. Jac.* 134. 2 *Inſt.* 118.

How Actions upon penal Statutes to be brought.

K **Actions** upon penal Statutes, how to be brought. 3 *Lev.* 374.

A **Where** Coſts in Actions upon Penal Statutes ſhall be given, and when not. 3 *Lev.* 374.

When there ſhall be Coſts in Actions on penal Statutes, and when not.

B **Where** Declarations upon Acts of Parliament have been amended. 3 *Lev.* 42.

Where Declarations upon Acts of Parliament have been amended.

C **By** what Words in an Act of Parliament, intailed Lands ſhall be forfeited. 2 *Lev.* 169.

By what Words in an Act, intailed Lands ſhall be forfeited.

D **In** what Statutes Copyholds are included. 3 *Lev.* 327.

In what Statutes Copyholds are included.

E **Though** a Statute appoints a Proſecution at the Aſſizes or Star-Chamber, yet the King's Bench is not excluded without particular Words. 3 *Lev.* 179.

Where the King's Bench is not excluded by an Act of Parliament.

F **Where** a Statute gives a Forfeiture in Courts, where no Protection, Eſſoin, *&c.* is allowable, extends only to the Courts at *Weſtminſter*, and not to any other inferior Court; though *Weſtminſter* is not named: For an inferior Court cannot allow of Protections. *Cro. Car.* 112. *pl.* 4. 146. *pl.* 26.

Where a Statute gives a Forfeiture, and ſays, That Eſſoin, Protection, *&c.* ſhall be allowed, ſuch Forfeiture muſt be ſued for in the Courts of *Weſtminſter*, and not in any inferior Courts.

G **The** Statute of 23 *H.* 8. *cap.* 5. concerning *Sewers*, was made for the Eaſe of the People, *to wit*; That the Defendants who are proſecuted for acting under that Statute, may plead it, or not plead it, at their Election. (*Hill.* 22 *Car. B. R.*) But the ſafeſt Way is to plead it. See the Statute.

For whoſe Benefit the Statute of *Sewers* was made.

23 **H.** 8. **cap.** 5.

H **The** Statute of 21 *Jac. c.* 13. of *Jeofails*, which is to help the Defects in Pleadings, doth extend to all inferior Courts, as well as to the ſuperior Courts: for it is a beneficial Law for the People, and ſhall therefore be expounded largely, and not with a Reſtriction, as ſome other Statutes touching the Proceedings in Law are: But this is now corroborated by the Statute of 4 & 5 *Annæ*, *For the Amendment of the Law.*

The Statute of *Jeofails*, 21 **Jac. cap.** 13. extends to inferior Courts.

4 & 5 **Ann.**

I **An** Action was brought upon the Statute of 5 *Eliz. cap.* 9. *ſect.* 12. for not appearing as a Witneſs upon a *Subpœna*; and the Plaintiff recovered 10*l.* and his Coſts. Alſo 9 *W.* 3. See Title **Witneſs** and **Actions.**

An Action brought upon the Statute of 5 **Eliz. cap.** 9. for a Witneſs's not appearing to give Evidence.

K **The** Defendant in Pleading need not ſet forth the whole Act of Parliament, but only ſo much as makes for himſelf. 1 *Plow.* 105. *a. Fulmerſton* and *Steward.*

Defendant need not ſet forth more of a Statute than makes for him.

L **Note,** Look into the Table in the firſt Part of the Statute-Book in Title **Continuance,** and that will direct you to all the Statutes which are continued to 6 & 7 *W.* 3.

Where to find the Continuance of Statutes in the firſt Part of the Statute-Book.

An

And where to find Statutes, which are repealed in the first Part of the Statute-Book.

And for Statutes repealed during that Time ſee Title **Continuance** and Title **Parliament** there. A

So alſo in the ſecond Part of the Statute-Book.

Alſo look into the Table in the ſecond Part of the Statute-Book, and there in Title **Continuance,** you will find all the Statutes which are continued from 7 *W.* 3. to 3 *Annæ.* B

So alſo in the ſecond Part of the Statute-Book.

And for Statutes repealed during that Time, ſee in Title **Repeal of Statutes** there. C

Statute of Frauds.

A Promiſe of Marriage not in Writing, whether within the Statute of Frauds. *Skin.* 24. D

Weſtm. 2.

Statute of *Weſtminſter* 2. provides no Remedy for cutting down of Trees. *Ibid.* 94. E

The Statute of 4 **Jac.** and 34 **H.** 8.

An Eſtate being created by the Crown, notwithſtanding the Alterations made by the Statute of 4 *Jac.* the Reverſion remains in the Crown; and is protected by 34 *Hen.* 8. *Skin.* 97. F

23 **Eliz.**

Statute 23 *Eliz.* extends to all Sorts of Recuſants; and though the Party be indicted upon that Statute in a wrong County, yet he ſhall have no Advantage of it, or avoid the Indictment for any Cauſe but Conformity. *Skin.* 99. G

22 **Car.** 2. **cap.** 9.

Wilful Wrongs are not within the Statute of 22 *Car.* 2. *cap.* 9. *Skin.* 100. H

The Statute for regulating Corporations.

The Privilege of being a Freeman is not ſuch an Intereſt or Truſt for Government as is within the Statute of *Car.* 2. for regulating Corporations. *Skin.* 117. I

35 of **Eliz.** againſt Jeſuits.

Y. was committed by a Secretary of State upon 35 *Eliz.* and the Warrant was 'till he ſhall be diſcharged by due Courſe of Law; where the Statute is, That he ſhall be committed, there to remain without Bail or Mainprize 'till he ſhall make a direct Anſwer if he be a Jeſuit, *&c.* and the Commitment was adjudged to be regular, for it is in the Nature of a Conviction, and the Party is in Execution 'till Anſwer made. *Skin.* 369. K

Perſons not within the expreſs Words.

Whether Perſons ſhall upon an Indictment be expounded to be within the Intent of a penal Statute who are not within the expreſs Words or Letter of it. *Skin.* 428, 429. L

Of the Statute of exerciſing a Trade, not being an Apprentice.

One exerciſed a Trade ſo as to fulfil the Intent of a Statute, yet not doing it according to the Words or Letter, this was adjudged an uſing of the Trade contrary to the Statute. *Skin.* 428. M

Though a Statute concerns a particular Thing, and be private in its Nature, yet if the Forfeiture be to the King, that makes it a publick Act. *Ibid.* 429. N

A **The** Statute 12 *Car.* 2. of appointing Teſtamentary Guardians to Infants. *Mod. Caſes in Law and Equity* 136, 137.

12 Car. 2. of Guardians.

B **The** Statute 29 *Car.* 2. *cap.* 3. That all Declarations or Creations of Truſts ſhall be in Writing, ſigned by the Party, *&c.* explained. *Idem* 72.

Statute of Frauds.

C **The** Statute 11 *&* 12 *W.* 3. againſt Papiſts purchaſing Eſtates explained, ſee Title **Papiſts.** *Idem* 155, 167, 168, 173.

12 W. 3. againſt Papiſts.

D **Statutes** are to be expounded by the Rules and Reaſons of the Common Law. *Idem* 8.

E **The** King can't be diveſted of any of his Prerogatives by the general Words of a Statute. *Idem* 6, 8.

F **Though** the Words of an Act are general, yet to avoid an apparent Injury they ſhall be ſpecially conſtrued. *Idem* 7.

G **And** the general Words of a Statute may be qualified or reſtrained by ſubſequent Clauſes or Sentences. *Idem* 8.

H **The** *Habeas Corpus* Act being ſuſpended, the Court declared they had no diſcretionary Power to Bail, *&c.* *Idem* 96.

I **Where** a Statute directs a Conviction to be on Oath, a Confeſſion of the Offence is ſufficient. *Idem* 179.

Stat. *Merton, cap.* 1. of Dower. *Idem* 25, 315.
Stat. *Glouceſter, c.* 1. Damages. *Idem.*
Stat. 43 *E.* 1. *c.* 1. *De terris Menſurandis.* Idem 276, 277.
Stat. 15 *R.* 2. *c.* 2. Forcible Entry. *Idem* 65.
Stat. 1 *H.* 5. *c.* 5. Addition. *Idem* 52.
Stat. 3 *H.* 7. *c.* 10. Coſts, *&c.* *Idem* 314.
Stat. 23 *H.* 8. *c.* 15. Paupers. *Idem* 344.
Stat. 25 *H.* 8. *c.* 22. Faculty. *Idem* 364.
Stat. 26 *H.* 8. *c.* 6. *Wales.* *Idem* 136.
Stat. 27 *H.* 8. *c.* 26. *Wales.* *Idem.*
Stat. 28 *H.* 8. *c.* 15. Piracy. *Idem* 74.
Stat. 34 and 35 *H.* 8. *c.* 26. *Wales.* *Idem* 136.
Stat. 5 and 6 *H.* 8. *c.* 25. Alehouſes. *Idem* 309.
Stat. 5 *Eliz. c.* 9. Perjury. *Idem* 179.
Stat. 18 *Eliz. c.* 3. Baſtardy. *Idem* 4.
Stat. 43 *Eliz. c.* 2. Poor. *Idem* 39, 344.
Stat. 3 *Jac.* 1. *c.* 8. Bail in Error. *Idem* 79, 237.
Stat. 21 *Jac.* 1. *c.* 19. Bankrupts. *Idem* 49.
Stat. 16 and 17 *Car.* 2. *c.* 8. Jeofails. *Idem* 198, 356.
Stat. 17 ———————— 3. Churches united. *Idem* 6, 7.
Stat. 22 and 23 *Car.* 2. *c.* 9. of full Coſts. *Idem* 371.
Stat. 6 and 7 *W.* 3. *c.* 11. Prophane Curſing, *&c.* *Idem* 58, 366.
Stat. 8 and 9 *W.* 3. *c.* 11. Vexatious Suits. *Idem* 115, 366.
———————— *c.* 17. Eſcapes by Marſhal. *Idem* 350.
Stat. 9 and 10 *W.* 3. *c.* 17. Bills of Exchange. *Idem* 373.
———————— *c.* 25. Stamp and Duties. *Idem* 365.

Stat. 10 and 11 *W.* 3. *cap.* 23. Felony. *Mod. Caſes in Law and Equity* 165.

Stat. 12 *W.* 3. *c.* 3. Privilege of Parliament. *Idem* 226.

Stat. 3 and 4 *Ann. c.* 9. Promiſſory Notes. *Idem* 362, 373.

Stat. 4 and 5 *Ann. c.* 16. Amendment of the Law. *Idem* 77, 198, 285, 303, 356.

Stat. 5 *Ann. c.* 14. Preſerving the Game. *Idem* 63, 208.

——— ——— *c.* 31. Felony. *Idem* 264.

Stat. 6 *Ann. c.* 16. Brokers. *Idem.* 103.

Stat. 7 *Ann. c.* 12. Arreſts, Ambaſſadors Servants. *Idem* 288.

Stat. 8 *Ann. c.* 9. Duty on Candles. *Idem* 319, 320.

Stat. 9 *Ann. c.* 14. Againſt Gaming. *Idem* 57, 187.

——— ——— *c.* 20. *Quo Warranto, &c.* Idem 28, 113, 127, 133, 203, 209, 213, 234, 350, *&c.*

Stat. 1 *Geo.* 1. *c.* 13. Popiſh Recuſants. *Idem* 44, 45.

——— ——— *c.* 48. For preſerving Trees. *Idem* 175.

Stat. 3 *Geo.* 1. *c.* 15. Sheriffs. *Idem* 187.

Stat. 5 *Geo.* 1. *c.* 24. }
Stat. 6 *Geo.* 1. *c.* 22. } Bankrupts. *Idem.* 348.

Stat. 7 *Geo.* 1. *c.* 13. Combination of Taylors. *Idem* 10, 11.

——— ——— *c.* 28. *South-Sea* Directors. *Idem* 291.

——— ——— *c.* 29. Pardon. *Idem* 103.

Stat. 7 *Geo.* 1. *Seſſ.* 2. *c.* 1. Regiſtring Contracts. *Idem* 173, 232.

Stat. 8 *Geo.* 1. *c.* 19. Preſerving the Game. *Idem* 238.

Stat. 9 *Geo.* 1. *c.* 1. Suſpending *Habeas Corpus.* Idem 96.

Statute of Limitation of Actions.

Statutes of Limitation, what.

These are Statutes which limit and appoint, within what Time ſeveral real and perſonal Actions therein mentioned ſhall be brought. A

What Entry or Claim ſhall ſave the Parties Claim as to Land. 4 & 5 Ann.

See by the Statute of 4 & 5 *Annæ*, That no B Entry or Claim to be made upon any Lands, *&c.* ſhall be of any Force to avoid a Fine with Proclamation, or ſhall be a ſufficient Entry or Claim with-

within the Statute of 21 *Jac. cap.* 16. entituled, *An Act for Limitation of Actions, and for avoiding of Suits in Law*; unleſs upon ſuch Entry or Claim, an Action ſhall be commenced within a Year after the making of ſuch Entry or Claim, and proſecuted with Effect. See Title **Claim.**

When Actions for Seamens Wages ſhall be brought.

4 & 5 **Ann.**

A **By** the aforeſaid Statute all Actions to be brought in the Admiralty for Seamens Wages due after the firſt Day of *Trinity* Term 1706, ſhall be brought within ſix Years after the Cauſe of ſuch Action ſhall accrue, unleſs under the Diſabilities therein mentioned. See the Clauſe at large in Title **Wages.** See alſo there another Clauſe for the Limitation of ſeveral Actions therein mentioned, where the Defendant ſhall be beyond the Seas. See *Cro. Car.* 333. *pl.* 20. 334.

So alſo where the Defendant is beyond Sea.

This Statute doth not extend to Spiritual Courts.

21 **Jac. cap.** 16.

B **The** Statute of Limitations, 21 *Jac. cap.* 16. doth not extend to Spiritual Courts, but only to Actions ſuable in the King's Courts. *Hill.* 5 *W. & M. B. R.*

Nor to an Action of Debt for Tithes.

C **It** doth not extend to an Action of Debt for Tithes. *Cro. Car.* 513. *pl.* 10.

The Plaintiff ſhall have ſix Years to bring an Action againſt an Infant after he comes at Age.

D **Where** the Defendant is an Infant, the Plaintiff ſhall have ſix Years to bring his Action againſt him after he comes of Age. *Lutw.* 2431, 2441.

For Limitation of real Actions.

32 **H.** 8. **cap.** 2. and 21 **Jac.**

E **For** the Statute of Limitations, 32 *H.* 8. *cap.* 2. of real Actions, and for Avowries. See Title **Seiſin.**

The owning of a Converſion within ſix Years, is not a new Converſion.

F **An** Horſe was converted ſeven Years ago, and about two Years ago the Defendant owned the Converſion, and ſaid, That he would pay for the Horſe; and upon *non cul infra ſex annos* pleaded in Trover, and being made a Caſe of, upon a Trial at *Niſi prius* in *Middleſex* the Defendant had Judgment, becauſe the owning of the Converſion, and ſaying that he would pay for it, is not a new Converſion, it is only an Evidence of the Converſion, and ſo it is barr'd by the Statute. *Hill.* 10 *W.* 3. in *C. B.* See *Cro. Car.* 245, 333. 1 *Lev.* 110, 111. *Note*, An *Indebitatus Aſſumpſit* would have lain for owning the Horſe, and promiſing to pay for it.

Where the Defendant ſaid after the ſix Years, *Prove your Debt, and I will pay it*, this is a new Promiſe.

G **An** Executor brings an *Indebitatus* for Goods ſold by the Teſtator, and upon *Non Aſſumpſit infra ſex annos* pleaded, it appeared that the Goods were ſold ſix Years before the Action brought, but that the Defendant ſaid to the Plaintiff, *Prove your Debt, and I will pay the Money*; this is a new Promiſe, and ſhall charge the Defendant. 5 *Mod.* 426.

It

So if a Man acknowledges a Debt within ſix Years, it is an Evidence of a Promiſe.

If a Man acknowledges a Debt within ſix Years, though it is not a Promiſe, yet it is an Evidence of a Promiſe. 5 *Mod.* 426. A

No Advantage to be taken of the Statute, unleſs pleaded, or found ſpecially.

No Advantage ſhall be taken of the Statute of Limitations, unleſs pleaded, or found ſpecially. *Lutw.* 813. 1 *Lev.* 110. B

This Statute ſaves the Plaintiff's Right where he is beyond Sea, not where the Defendant is beyond Sea.

The Statute of *Limitations* ſaves the Plaintiff's Right where he is beyond Sea; but not where the Defendant is beyond Sea: For ſo are the very Words of the Statute. 1 *Lev.* 143. C

Stat. 4 & 5 Ann.

But now by the Statute of 4 & 5 *Annæ*, where the Defendant is beyond Sea, the Plaintiff's Right is ſaved, if he proſecutes it within ſix Years after the Defendant's coming from beyond Sea. D

Non. Cul. infra ſex annos for *quatuor annos*, is good.

Non cul. infra ſex annos, inſtead of *quatuor annos*, is good; becauſe it is more beneficial for the Plaintiff, and therefore in his Favour. 3 *Annæ*. See *poſtea*. E

Writs of Formedon muſt be brought within twenty Years.
21 Jac. cap. 16.
4 & 5 Ann.

All Writs of Formedon in Diſcender, Remainder, and Reverter, muſt be ſued within twenty Years after the Cauſe of Action firſt deſcended, and not after. F

Entries muſt be made within twenty Years.
21 Jac. cap. 16.
4 & 5 Ann.

The Entry or Claim muſt be proſecuted with Effect within a Year, or will be of no Effect.

That every Perſon who hath Right of Entry into any Manors, Lands, *&c.* muſt enter within twenty Years next after their Title accrued, or be utterly excluded: Infants, Feme-Coverts, *&c.* excepted. *Note*, By the Statute of 4 & 5 *Annæ*, it is enacted, That ſuch Entry or Claim ſhall be of no Effect, unleſs it be proſecuted with Effect, within a Year after the making of ſuch Entry or Claim. See before in this Title. G

See an Expoſition upon the Statute of
21 Jac. cap. 16.

See much Learning upon the Statute of 21 *Jac. cap.* 16. of Limitations in real Actions, and Titles of Lands. *Lutw.* 779. H

A *Clauſum fregit*, tho' in another County, ſaves the Statute.

A *Clauſum fregit*, although in another County, ſaves the Statute. *Lutw.* 260. I

The Statute cannot be extended by Equity, where the Defendant is beyond Sea.

The Statute cannot be extended by Equity, where the Defendant is beyond Sea, becauſe the Plaintiff may ſue out an Original, and continue it. *Lutw.* 950. See *Lev.* 143. See *Cro. Car.* 245. *pl.* 7. 333. K

In what Actions, and in what Time, Actions may be brought againſt Defendant after their coming into *England*, by the Statute of
4 & 5 Ann.

By the Statute of 4 & 5 *Annæ*, it is enacted, That if any Perſon againſt whom there is or ſhall be any Cauſe of Action for Seamens Wages, or any Cauſe of Action for Treſpaſs, Detinue, Trover or Replevin; for taking away Goods or Chattels, Account, or upon the Caſe, or of Debt grounded L upon Loan or Contract, without Specialty of Debt, for Arrearages of Rent; or Aſſault, Menace, Battery, Wounding and Impriſonment, or any of them; be or ſhall at the Time of any ſuch Cauſe of Suit or Action given or accrued, fallen or come, be beyond the Seas: Then ſuch Perſon who is or ſhall be entitled to ſuch Suit or Action, ſhall be at Liberty to bring the ſaid Action againſt ſuch Perſon or Perſons, after their Return from beyond the Seas, within ſuch Times as are reſpectively limited for the bringing of ſuch Actions before by this Act, and by the other Act made in 21 *Jac.* of Limitations. See in Title **Wages**.

21 Jac.

A **A Promiſe** to do a Thing upon Requeſt, the Action ariſes upon the Requeſt, and the Statute of Limitations is not pleadable to the Promiſe. 1 *Lev.* 48.

A Promiſe to do a Thing upon Requeſt, the Action ariſes upon the Requeſt.

B **Where** a Man promiſes to do a Thing upon Requeſt, although the Promiſe were made twenty Years before, yet if the Requeſt be made within the ſix Years, it is well enough; for it is the Requeſt that makes the Action. *Cro. Car.* 139. *pl.* 14.

A Promiſe to do a Thing upon Requeſt, the ſix Years commence from the Requeſt.

C **A Promiſe** made twenty Years ago, if the Defendant doth not plead the Statute to it, he ſhall have no Advantage of it. 1 *Lev.* 110. *Lutw.* 813. *Cro. Car.* 381. *pl.* 8.

The Defendant without pleading of the Statute cannot take Advantage of a Promiſe made twenty Years ago.

D **Stated** Accounts are not within the Proviſo of the Statute of Limitations, but Accounts current are. 1 *Lev.* 287.

Stated Accounts are not within the Proviſo of this Statute.

E **The** Exception in the Statute of 21 *Jac. cap.* 16. of Limitations as to Merchants Accounts, did not extend to Accounts between an Inland Merchant and his Factor, but only to Merchants trading beyond the Seas. *Chan. Rep.* 152.

The Clauſe of the Statute of Limitations about Merchants Accounts extends only to Foreign, not Inland Merchants.

F **The** Statute of Limitations is pleadable to an *Aſſumpſit* brought by an Attorney for his Fees and Moneys laid out, becauſe the Fees are not upon Record. 3 *Lev.* 367.

This Statute is pleadable to an Attorney for his Fees.

G **See** an Expoſition upon this Statute. 2 *Mod.* 71, 72, 73.

See an Expoſition upon this Statute.

Statute of Limitation of Writs of Error.

No Fine, Recovery or Judgment to be revers'd by Error, unleſs the Writ be brought within twenty Years.

10 & 11 W. 3. c. 14.

NO Fine or Common Recovery, nor any Judgment in any real or perſonal Actions, ſhall be reverſed or avoided by any Error or Defect therein, unleſs the Writ of Error be brought and proſecuted with Effect within twenty Years after ſuch Fine levied, or Recovery ſuffered, or Judgment ſigned, or entred of Record: A Proviſo for Infants, Perſons beyond Sea, *&c.* 10 *&* 11 *W.* 3. *cap.* 14. A

Statutes Staple and Merchant.

See { Extent. Recognizance.

Who ſhall take a Recognizance in the Nature of a Statute Staple. 23 H. 8. cap. 6.

The Fees for it.

The Penalty for taking more.

THE Chief Juſtice of the King's Bench, and the Chief Juſtice of the Common Pleas, may each of them, and in their Abſence, the Mayor of the Staple at *Weſtminſter*, and Recorder of *London*, may jointly take Recognizances for Payment of Debts, according to the Form preſcribed in the Statute, which ſhall be inrolled by the Clerk of the Recognizances. The Judge's Fee for taking of the Recognizance is 3 *s.* 4 *d.* the Clerk's for inrolling of it 3 *s.* 4 *d.* and for the Certificate of it, 1 *s.* 8 *d.* Whoever takes more ſhall forfeit 40 *l.* *Sect.* 2. B

A That there ſhall be like Proceſs, Execution and Advantage, as upon any Obligation of Statute Staple. *Sect.* 6.

The like Execution as upon a Statute Staple.

B That upon ſealing of the Proceſs there muſt be paid to the King an Half-penny in the Pound. *Sect.* 8.

There muſt be an Half-penny in the Pound paid to the King.

C A Clerk of the Statutes ſhall reſide in his Office, and have ſufficient Lands in his County.

A Clerk of the Statutes ſhall reſide upon his Office, and have ſufficient Lands in his County 14 E. 4. cap. 11.

D The Statute Merchant for the Recovery of Debts.

Acton Burnell made 11 or 13 E. 1.

E All Statutes Merchant, and of the Staple, muſt, within ſix Months after acknowledging, be entred with the Clerk of Recognizances, or ſhall be void againſt any Purchaſor, for Money, or other good Conſideration.

All Statutes Merchant and Staple muſt be entred within ſix Months. 27 Eliz. cap. 4. ſect. 7, 8.

F The Clerk of the Recognizances muſt have Eightpence for the Entry, which if the Clerk ſhall refuſe or neglect to do, he forfeits 20 *l.* Alſo the Clerk to have Two-pence a Year for every Year's Search. *Sect.* 7, 8, 9, 10, 11.

The Entry muſt be but Eight-pence, Penalty 20 *l.* and Two-pence a Year for every Year's Search.

G Debt lies as well upon a Statute Staple, as upon a Bond. *Cro. El.* 355. *pl.* 14, 461, 494, 319.

Debt lies as well upon a Statute as upon a Bond.

H The Conuſee of a Statute by Deed releaſes to the Tenant of the Land, and a Purchaſor, all his Right, Intereſt and Demand in the Land: And held to be no Diſcharge; for at the Time of the Releaſe he had no Right or Cauſe of Demand in the Land; for the Land is not the Debtor, but the Perſon. *Cro. Eliz.* 552.

Where a Releaſe of the Conuſee to the Tenant of the Land is no Diſcharge of the Land.

I Debt was brought upon a Statute *ſolvend. cum inde requiſitus eſſet*; and upon Oyer it was *ſolvendum* at the Feaſt of St. *George* the Martyr, and upon a Demurrer held to be an incurable Fault. *Cro. Jac.* 316. *pl.* 20.

Solvend. cum inde requiſitus, inſtead of ſuch a Feaſt, and naught.

K All Proceedings upon a Statute Staple are in Chancery in the Petty-bag Office.

How the Proceedings are upon a Statute Staple.

L But Proceedings upon a Statute Merchant are thus, *viz.* upon a Certificate made to the Court of Chancery, there goes out a *Capias ſi laicus* returnable either in the King's Bench or Common Pleas, upon which there goes out an Extent. See *Cro. Car.* 450, 457.

How upon a Statute Merchant.

M If one acknowledge two Statutes upon his Lands one after the other, and ſatisfies the former Statute, but doth not vacate it; and the Conuſee of the later Statute takes out an Extent upon the Lands, this Extent may be avoided until the former Statute be avoided by a *Sci. Fa.* (*Hill.* 22 *Car. B. R.*) For the Law is not to take Notice of private Acts done between the

Two Statutes upon Lands; one of them ſatisfied but not vacated: An Extent upon the other may be avoided till the firſt Statute be vacated.

Parties; and it doth not appear that the former Statute is ſatisfied: But upon the Pleading and an Iſſue upon the *Sci. Fa.* it will appear whether it be or no.

A Statute upon Lands muſt be ſatisfied before an Obligation, and why.

A Statute acknowledged upon Lands, is a preſent Duty, and ought to be ſatisfied before an Obligation, which is not ſo. (*Mich. 23 Car. B. R.*) For a Debt due upon an Obligation is but a Choſe in Action, and recoverable by Law; and not a preſent Duty due by Law, as a Debt upon a Statute, Judgment or Recognizance is, upon which preſent Execution is to be taken without farther Suit. A

Subpoena.

Subpœna ad comparendum; ad teſtificandum.

Subpœna **to appear is a Writ iſſuing out of the Chancery or Exchequer:** Subpœna ad teſtificandum **is a Writ iſſuing out of the Court, where the Iſſue is joined, upon which Iſſue the Evidence is to be given.** B

Where *Subpœna's* are to iſſue out in Chancery, and when. 4 & 5 **Annæ.**

No *Subpœna* to iſſue out until the Bill filed, and a Certificate thereof; which ſee in Title **Chancery**, by the Statute of 4 & 5 *Annæ*. C

Succeſſor, See **Corporation.**

Suggeſtion.

See
Conſultation.
Prohibition.
Tithes.

Suggeſtion, what.

Suggeſtions are Grounds to move for Prohibitions to Suits in the Spiritual Courts, when they meddle with Matters out of their Juriſdictions: There are alſo Suggeſtions for a Retorno Habend. **where** Non cepit **is pleaded in Replevin.** D

A **A Suggeſtion** made to the Court, That the Thing for which the Libel in the Admiralty-Court againſt the Party, was done *infra corpus comitatus*, whereas in Truth it was done beyond the Seas, is notwithſtanding a good Suggeſtion for the Court to grant a Prohibition unto the Admiralty, upon; for it is but to try the Juriſdiction of the Admiralty, and not the Merits of the Cauſe; and the Court cannot tell whether it be true or not, but will ſuppoſe it to be true; and if it be falſe, the Court will compel the Plaintiff in the Prohibition to declare upon his Suggeſtion, and there the Defendant may traverſe the Fact, and if a Verdict paſs for him, he ſhall have his Writ of Conſultation to authorize him to proceed in the Admiralty. *Mich.* 22 *Car.* *B. R.*

Though the Thing be done beyond Sea, yet if it be ſuggeſted to be done within a County, the Court will grant a Prohibition to the Admiralty.

B **Matters** of Record ought not to be ſtayed upon the bare Suggeſtion or Surmiſe of the Party; but there ought to be an Affidavit made of the Matter ſuggeſted, to induce the Court to ground a Rule for ſtaying the Proceedings upon the Record. (*Mich.* 1650. *B. R.*) For the Law favours not the ſtopping of the Proceedings in Law, except there be very good Cauſe for it.

Matters of Record may not be ſtayed upon bare Suggeſtions.

C **Suggeſtions** and Surmiſes, in Caſe of a *Retorno Habendo*, are never traverſable. *Wymbiſh* and Lord *Willoughby*. 1 *Plow.* 76. *a.* But where they are in caſe of the Spiritual Court or Admiralty, they are traverſable.

Suggeſtions and Surmiſes are never traverſable.

D **In** caſe of a *Modus decimandi*, if the Plaintiff in the Prohibition do not within ſix Months after the granting of his Prohibition, prove his Suggeſtion by the Depoſition of two or more ſubſtantial Witneſſes, taken before a Judge of that Court which granted the Prohibition, the Defendant ſhall have his Writ of Conſultation and his Coſts, by the Statute of 2 & 3 *E.* 6. *cap.* 13. *ſect.* 14.

If a Suggeſtion be not proved within ſix Months after Prohibition, a Conſultation lies with Coſts. 2 & 3 **E.** 6. **cap.** 13. **ſect.** 14.

E **A Suggeſtion** for a Prohibition where Tithes for barren Heath are ſued for within ſeven Years, by 2 *E.* 6. *cap.* 13. *ſect.* 14. ought to be proved as well as a Preſcription *de Modo decimandi*, or a Diſcharge of Tithes, or any other Suggeſtion. *Cro. Car.* 208. *pl.* 3.

In what Caſes the Suggeſtion muſt be proved. 2 **E.** 6. **c.** 13. **ſect.** 14.

F **How** Breaches of Covenants and Deaths muſt be ſuggeſted upon Record, and what Proceedings to be thereupon. 8 & 9 *W.* 3. *cap.* 10. See the Statute.

What Breaches of Covenant and Deaths muſt be ſuggeſted upon Record. 8 & 9 **W.** 3. **cap.** 10.

G **A Suggeſtion** for a Prohibition is a Writ; ſo that if there be a Variance between it and the Declaration, all is naught. 1 *Leon.* 128. *Caſe* 175. And alſo the ſame was adjudged in *B. R.* *Paſch.* 5 *Annæ*, *inter Sparrow* and *Allen*.

Variance between the Suggeſtion and Declaration is naught.

Summons.

Summons in a Formedon, how to be made and tried.

Summons in a Formedon in Remainder, how to be made, and how to be tried. *Cro. El.* 42. *pl.* 2. A

How Writs of Summons in real Actions muſt be executed. 31 Eliz. cap. 3. ſect. 2.

That after every Summons upon the Land in a real Action, fourteen Days at the leaſt before the Return, Proclamation ſhall be made thereof on a *Sunday*, at or near the moſt uſual Church Door of the Church or Chapel of the Town where the Land lies, which ſhall be returned with the Names of the Summoners; and if ſuch Proclamation ſhall not be had, then no *Grand Cape* ſhall iſſue out; but an *alias* and *pluries* Summons, until a Summons and Proclamation ſhall be duly made and returned. B

Juſtices Order.

Where a Summons muſt be ſet forth in the Order of Juſtices, *&c.* See *Mod. Caſes* 3, 309, *&c.* C

Where an Information lies.

If the Defendant be not ſummoned 'tis a Miſbehaviour in the Juſtices, for which an Information lies. *Ibid.* 378. D

Baſtardy.

An Order of Baſtardy quaſhed, for not ſetting forth that the putative Father was ſummoned. *Ibid.* 3. E

Summons for a Rent.

A Summons may be for a Rent, *viz.* upon the Land. *Comber.* 146. F

Summons and Severance.

Summons and Severance, what.

Summons and Severance is when one of the Plaintiffs or Demandants never appeared, then the other muſt ſue out a Writ of Summons againſt him; and if he doth not come in upon it, then to have Judgment ad ſequendum ſolum. **I have alſo known it done in the King's Bench, by giving of a Rule to appear and come in.** G

A **Three** Defendants in the Action bring a Writ of Error, and one releaſes the Errors; he may be ſummoned and ſevered, and then the other two ſhall proceed to reverſe the Judgment. See 6*Rep.*26.

Three Defendants bring Error; one releaſes Errors, he may be ſummoned and ſevered.

B **A Writ** of Error is brought by ſeveral Plaintiffs, only one appears and aſſigns Error without ſummoning and ſevering of the reſt, this is as null and void. *Cro. Eliz.* 892.

Where are ſeveral Plaintiffs in a Writ of Error, one of them cannot aſſign Error, without ſummoning and ſevering of the reſt.

C **There** can be no Summons and Severance after *in nullo eſt Erratum* pleaded. *Cro. Jac.* 117.

Not after *in nullo eſt Erratum*.

D **Summons** and Severance after Joinder in the Aſſignment of Errors. 6 *W. & M. B. R.*

Summons and Severance after Joinder in Errors.

E **A Judgment** is recovered againſt four Defendants. A Writ of Error is brought, and one of the four Defendants is ſummoned and ſevered, and he releaſes Errors. The Judgment is reverſed, *qoad* the three, and a *Nil capiat per Breve* entered for the fourth. *Mich.* 9*W.*

F **Summons** and Severance is always before Appearance, and Nonſuit after Appearance. 10 *Rep.* 135. *a.* It lies not upon a judicial Proceſs. *Ibid.*

Summons and Severance is always before Appearance.

Lies not upon judicial Proceſs.

G **Debt** by two Executors, one was ſummoned and ſevered, and he who was ſevered died: This doth not abate the Writ. 10 *Rep.* 133. *b.*

Two Executors, one who was ſevered died, abates not the Writ.

H **Debt** by two Executors, one of them is ſummoned and ſevered, and yet he releaſes, the Action is gone; but if the other had obtained Judgment, and died before Execution, it is a Queſtion whether the ſevered Executor may have Execution? becauſe no Perſon can ſue out Execution upon a Judgment, but he that is Party to it. *Dal.* 53. *pl.* 30.

The ſummoned Executor releaſes.

The proſecuting Executor dies.

Execution.

I **In** what Actions, as well real as perſonal, it lies. 10 *Rep.* 134.

It lies in real and perſonal Actions.

K **Six** Executors, three are ſummoned and ſevered, the other three go on with the Action, and recover Judgment: And it was adjudged, That the Judgment ſhall not be for all the ſix, but only for thoſe three who proſecuted. *Cro. Car.* 420. *pl.* 11, 421.

Where three of the ſix Executors are ſummoned and ſevered, how the Judgment ſhall be.

L **Of** Summons and Severance. *Vide Comb.* 95.

Sunday.

See {Eſcapes. Priſon and Priſoners.

Sunday, what.

A THE Lord's Day is the Day commonly called Sunday; and it is a Maxim in Law, That Dies Dominicus non eſt Dies Juridicus.

Forfeiture for exerciſing any Labour on the Lord's Day.

29 Car. 2. cap. 7.

B By an Act made 29 *Car.* 2. entituled, an *Act for the better Obſervation of the Lord's Day*, commonly called *Sunday*, it is enacted, That no Tradeſman or others ſhall exerciſe any worldly Labour upon the Lord's Day (Works of Neceſſity and Charity excepted) and every Perſon above fourteen ſo offending ſhall forfeit 5 *s.*

Or ſelling of any Goods, *&c.*

How to be convicted.

To ſeiſe and ſell the Goods.

When to be ſet in the Stocks.

C That no Perſon ſhall cry, ſhew, or expoſe to Sale, any Wares, Fruits, Herbs or Goods whatſoever on the Lord's Day, upon Pain of forfeiting ſuch Goods. The Conviction to be before any Juſtice of the Peace of the County, or Chief Officer; or any Juſtice of the Peace of or within any City, Borough or Town Corporate where the Offence ſhall be committed, upon View or Proof upon Oath of one or more Witneſſes, and upon ſuch Conviction, the Party convicting ſhall give a Warrant under his Hand to the Conſtable or Churchwardens of the Pariſh where ſuch Offence was committed, to ſeiſe the Goods ſo cried, and ſell the ſame, and levy the ſaid other Penalties and Forfeitures by Diſtreſs and Sale, rendering to the Party the Overplus; and in Default of ſuch Diſtreſs or Inſufficiency of the Offender to pay the Forfeitures, then he ſhall be ſet publickly in the Stocks for two Hours; all which Penalties ſhall be applied to the Poor of the Pariſh where the Offence ſhall be committed, ſaving only the Juſtice may reward out of the Money, not exceeding the third Part, to any Perſon who ſhall inform, provided it ſhall not extend

extend to dreſſing of Meat in Families or Inns, Cooks Shops or Victualling Houſes, nor crying of Milk before Nine of the Clock.

What Exceptions are out of this Act.

A **No** Proſecution to be after ten Days.

When the Proſecution to be.

B **That** no Perſon ſhall uſe, employ or travel upon the Lord's Day, with any Boat, Wherry, Lighter or Barge, except upon extraordinary Occaſions, to be allowed by ſome Juſtice of the Peace, upon Pain of forfeiting 5 *s.* for every Offence.

Who may travel on it.

C **That** no Drover, Horſe-Courſer, Waggoner, Butcher, Higler, nor any of their Servants, ſhall travel or come into an Inn on the Lord's Day, upon Pain of forfeiting 20 *s.* for every Offence.

D **That** no Hundred ſhall be chargeable in any Action for a Robbery on a Sunday; but the Hundred upon ſuch Robbery ſhall make Hue and Cry, and in caſe the Robbers be not taken, the Hundred ſhall anſwer ſo much to the King as the Party was robbed of.

No Hundred ſhall be chargeable for a Robbery on a Sunday.

E **No** Writ, Proceſs, Order, Warrant, Judgment or Decree, except in Caſes of Treaſon, Felony, or Breach of the Peace, ſhall be ſerved upon the Lord's Day; which if they be, all ſhall be void, and the Perſon ſo ſerving ſhall be liable to the Suit of the Party grieved, and anſwer Damages as if he had done the ſame without Writ, Proceſs, Warrant, Order, Judgment or Decree. See Title **Priſon and Priſoners.**

No Writ, Order, Warrant, Judgment or Decree, except for Treaſon or Felony, ſhall be ſerved on a Sunday.

F **A Priſoner** may be taken upon an Eſcape Warrant upon a Sunday, by the Statute of 5 *Annæ*, *Seſſ.* 2. *Vide* 3 *Salk.* 148.

A Priſoner may be taken on a Sunday upon and Eſcape Warrant. 5 **Annæ, Seſſ.** 2.

G **Tho'** Sunday is included in Notices for Trials, *&c.* yet 'tis not included in the four Days Rules to plead, *&c.* *Salk.* 624. *contra.* *Mod. Caſes* 21.

Notice of Trial and Rules to plead.

H **The** Defendant was cited on a Sunday to appear in the Spiritual Court upon a Libel for Incontinency, and good. *Carth.* 504.

Citation.

I **A** Writ of Inquiry returnable *tres Trin.* which was on a Sunday, and was returned as executed on Monday; held ill. 3 *Salk.* 346.

Writ of Inquiry.

Superſedeas.

Superſedeas, what.

A Superſedeas **is a Writ for ſtaying the ſuing out or executing of an Execution after a Writ of Error is allowed, and Bail put in: Also it is a Writ granted by the Court for the ſetting aſide of an erroneous judicial Proceſs.** A

A *Superſedeas* to the Sheriff is a good Cauſe to diſcharge a Priſoner.

A *Superſedeas* is as good a Cauſe to diſcharge a Priſoner, as the firſt Proceſs was to arreſt him, and he ought to obey it at his Peril. *Cro. Jac.* 379. *pl.* 7. B

A Writ of Error is a *Superſedeas* till the Errors are examined, affirmed, or reverſed.

A Writ of Error is in Judgment of Law a *Superſedeas,* until the Errors are examined, affirmed or reverſed. *Cro. Jac.* 534. *pl.* 19, 535. C

A *Superſedeas* in ſome Caſes ought not to be granted to ſtay Execution upon a Judgment, when a Writ of Error is brought to reverſe it.

In a Writ of Error brought in ſome Caſes provided by Statutes, there ought not to be a *Superſedeas* granted to him that brings the Writ of Error to ſtay Execution upon the Judgment which is to be reverſed by the Writ of Error, until he that brings the Writ of Error hath put in Security by Recognizance to proſecute with Effect, and to pay double Coſts and Damages if the Plaintiff in the Errors be nonſuit, or the Judgment be not reverſed by the Writ of Error, but affirmed. *Trin.* 24 *Car. B. R.* D

Into what Counties it is ſafe for the Plaintiff in Errors to bring a *Superſedeas.*

It is very hard to compel the Party that brings a Writ of Error to take out a *Superſedeas* into all the Counties where he hath Lands or Goods liable to the Execution upon the Judgment, for the reverſing whereof the Writ of Error was brought; yet it is a ſure Way for him that doth bring the Writ of Error to do it, to avoid a greater Trouble and Charge, which may otherwiſe befal him by the executing of the Judgment, if he have a violent and malicious Adverſary, than by taking out of the ſeveral Writs of *Superſedeas.* But *Note,* If the Attorney had Notice of this Writ of Error allowed, and Bail put in, and he afterwards makes out Execution, there being no *Superſedeas* allowed with the Sheriff; yet this is a Contempt in the Attorney, for which he may be puniſhed, and what he hath done ſet aſide. E

Where Notice of the Writ is a *Superſedeas.*

After

A **After** a Writ of Error is brought, and allowed by the Court where the Judgment was given, for the Reverſal whereof the Writ of Error is brought, the Hands of the Court are forecloſed, that is to ſay, ſtopp'd from proceeding upon the Judgment any farther, and there needeth no *Superſedeas* to be directed unto them; but it is neceſſary to mark the Roll with an *Allocatur* of the Writ of Error, to avoid farther Trouble.

In what Caſes it is neceſſary to mark the Roll of a Writ of Error allowed.

B **If** a Writ of Error be brought to reverſe a Judgment given upon a *Nil dicit*, in Caſe, Treſpaſs, Trover, *&c.* and all other Actions where Damages only are recovered: Upon the bringing and allowing of a Writ, the Clerk of the Errors makes out a *Superſedeas* without Bail; but no *Superſedeas* can be made till Bail put in, where there are Judgments upon Verdicts: And alſo where there are Judgments by Default, or upon Demurrer in Debt, unleſs it be upon a Sheriff's Bond, or Bond with Condition to do ſomething elſe than pay Money only, or againſt Executors or Adminiſtrators; in thoſe Caſes only, the Allowance of the Writ without Bail will be ſufficient.

In what Caſes a *Superſedeas* may be granted, upon allowing of a Writ of Error, and in what not.

C **If** a privileged Perſon, as an Attorney, *&c.* is ſued in any Juriſdiction foreign to his Privilege, he may have a *Superſedeas*. *Vaugh.* 155.

It lies for a privileged Perſon.

D **Where** Judgment is had againſt a Priſoner, and he is not charged in Execution within two Terms, he ſhall have a *Superſedeas*, and be diſcharged upon common Bail. *Carth.* 469.

Of a Perſon in Execution.

E **Where** a Writ of Error in Parliament is no *Superſedeas*. 3 *Salk.* 333.

Writs of Error in Parliament.

F **Where** a Writ of Error in the Exchequer Chamber is no *Superſedeas*. *Ibid.*

In the Exchequer Chamber.

Surpriſal.

G **THE** Court is always very cautious that no Perſon who hath any Cauſe depending before them, be ſurpriſed; eſpecially in ſuch Matters as are final and penal to the Party that is ſurpriſed. (*Mich.* 1649. *B. S.*) Becauſe by Surpriſals the Parties ſurpriſed are deprived of making their full Defence; and thereby beget Clamour, and give no Satisfaction, but cauſe more Suits and Trouble to the Parties.

The Court is cautious to prevent all Surpriſes.

Surrender.

See **Merger.**

A Surrender, what.

A **Surrender is the yielding up of an Eſtate for Life or Years to him that hath the immediate Eſtate in Reverſion or Remainder, wherein the Eſtate for Life or Years may drown by mutual Agreement of the Parties.** Co. Litt. 337. b.

If Leſſee for Life accepts of a Leaſe for Years, it is a Surrender of his Leaſe for Life.

B **If Leſſee for Life** do accept of a Leaſe for Years, it is a Surrender in Law of his Leaſe for Life. By *Rolle*, *Paſch.* 24 *Car. B. R.* For if it ſhould be otherwiſe, the Leaſe for Years would be made in vain, and to no Purpoſe, for both the Leaſes cannot ſtand together; and where doubtful Things may have an Operation by a reaſonable Conſtruction in Law, the Law will ſupport them, rather than to conſtrue them to be null and to none Effect.

Leaſe for Years, and Leſſee accepts another Leaſe to commence afterwards, it is a Surrender of the former Leaſe.

C *A.* leaſes to *B.* for ſixty Years, and afterwards *B.* accepts a Leaſe to commence divers Years afterwards, but within the ſixty Years; this is an immediate Surrender of the former Leaſe for ſixty Years, although the other Leaſe did not commence till *in futuro*; becauſe the Leſſee hath by accepting this ſecond Leaſe affirmed the Leſſor to have Ability to make the new Leaſe, the which he hath not if the firſt Leaſe ſhould ſtand. See 5 *Rep.* 11.

Where a Surrender ſhall veſt an Eſtate before Agreement.

D **Where** a Surrender ſhall veſt the Eſtate before Agreement thereto; and if not then, if after Acceptance and Agreement, it ſhall veſt *ab initio.* 3 *Lev.* 284. A Surrender diveſts the Eſtates immediately before expreſs Aſſent of the Surrenderee. 2 *Ventr.* 203, &c.

Leſſee for Years ſurrenders to the Reverſioner, it is good by way of Surrender; not ſo in caſe of Tenant for Life.

E **Leſſee** for Years releaſes to him in Reverſion, it is good by Surrender, as conſiſting in Point of Contract; but if Tenant for Life releaſes, it is by Way of Releaſe. 1 *Lev.* 145.

One

A **One** Termor cannot ſurrender to another Termor. 1 *Leon.* Caſe 420. *Per Poph.* He that hath an Eſtate for ten Years, may ſurrender to him who hath an Eſtate for twelve Years. *Cro. Eliz.* 302, 522.

One Termor cannot ſurrender to another Termor.

B **Leſſee** for twenty-one Years takes a Leaſe of the ſame Land for forty Years to commence after the Death of *J. S.* This is not any preſent Surrender of the firſt Term, but if *J. S.* dies within the Term, it is. 4 *Leon.* Caſe 83.

Where a Leaſe to begin after a Death, ſhall be a Surrender of a preſent Term, and where not.

C **Tenant** at Will cannot ſurrender any more than he can grant. *Cro. El.* 156. *pl.* 39.

Tenant at Will cannot ſurrender.

D **Leſſee** for Years accepts of a ſecond Leaſe to begin at *Michaelmas* following; this is an immediate Surrender of the firſt Leaſe. *Cro. El.* 605. *pl.* 3.

Acceptance of a ſecond Leaſe at a Time to come is an immediate Surrender.

E **An** Acceptance of a void Leaſe is a Surrender in Law of a good Leaſe in Being at the Time of the Acceptance. *Cro. Eliz.* 873. *pl.* 12. 874.

Acceptance of a void Leaſe is a Surrender of a good Leaſe.

F **A Copyholder** leaſes, and then ſurrenders the Reverſion of two Parts, and for Rent Arrear diſtreins, and may without Attornment; becauſe the Eſtate paſſes by the Surrender and Admittance in Court, which are publick Acts. 1 *Lev.* 40.

A Copyholder leaſes and ſurrenders the Reverſion of two Parts, he may diſtrein for the other.

No Attornment neceſſary on a Surrender, and why.

G **He** that hath a future Intereſt, cannot ſurrender it by any expreſs Surrender, but by taking of a new Leaſe he may. 6 *Rep.* 69. *a.*

How a future Intereſt may be ſurrendered.

H **Letters Patent** for Years were delivered into Chancery to be cancelled, and new Letters Patent to be made for Years; but the firſt were not cancelled, and yet good; becauſe the ſecond ſhall be a Surrender in Law of the firſt, and the not cancelling was the Fault of the Chancery which ought to have done it. 10 *Rep.* 66. *b.* 67. *a.*

A ſecond Patent for Years is a Surrender of the firſt.

I **A Feoffment** is made to a Stranger of Lands leaſed for Years, and Seiſin is delivered in the Leſſee's Preſence and with his Agreement; this is no Surrender of his Term, but only his Aſſent to put the Feoffee in Poſſeſſion. *Dal.* 19. *pl.* 6.

Leſſee agrees to the Livery, is no Surrender of his Leaſe.

K **A Surrender** may be to an Uſe, but how it may be, ſee *Cro. Eliz.* 688. *pl.* 23.

A Surrender may be to an Uſe.

L **Acceptance** of a void Leaſe is a Surrender of a good Leaſe. *Cro. El.* 873, 874.

Acceptance of a void Leaſe is a Surrender of a good one.

M **The** Surrendree of a Reverſion of Copyhold Lands may have an Action againſt the Leſſee upon an expreſs Covenant to repair a Surrender by Tenant for Life, to him in Remainder, is not good without the Aſſent of the Surrendree. *Carthew* 211, 212, 250.

Action againſt Leſſee by Surrendree of a Reverſion.

Where Aſſent of Surrendree neceſſary.

Conſtruction of a Surrender.

Where a Surrender is to be conſtrued as a Conveyance at Common Law. *Salk.* 621. A

Notice or Acceptance.

A Surrender veſts the Eſtate in the Surrenderee without Notice, or his expreſs Acceptance. *Ibid.* 618. B

Where it veſts a Fee.

A Surrender veſts a Fee in *A. & Ux'*, though an Eſtate for their Lives be expreſſed, *&c. Vide* Tail. *Ibid.* 620. C

Copyhold.

A Surrender of a Copyholder is good, though not agreeing with the Covenant to ſurrender. 3 *Salk.* 100. D

Survivor.

See {**Jointenants.**
Tenants in Common.}

Survivor, what.

Where two or more are Jointenants in any Thing, when one dies (if but two only) the whole goes to the Survivor; but if more than two, then the Part of him who is dead goes amongſt the Survivors. E

Two are bound in a Statute, the Conuſee may ſue either the Survivor or the Executor of the Deceaſed.

Two are bound in a Statute, one dies, it is at the Election of the Conuſee to ſue either the Survivor or the Executor of the Deceaſed. 1 *Mod.* 195. F

A Joint Lien which binds the Land, ſhall not ſurvive, or lie only againſt the Survivor.

A Joint Lien which binds the Land, ſhall not ſurvive, or lie only againſt the Survivor. 3 *Rep.* 14 *a.* G

Suſpenſion.

See { Condition. Executors. Extinguiſhment.

A Suſpenſion in legal Underſtanding is taken to be where a Rent, Profit apprender, &c. by reaſon of Unity of Poſſeſſion of the Rent, &c. and of the Land out of which they iſſue, are not in Eſſe for a Time, Et tunc dormiunt, but may be revived or awaked. And they are ſaid to be extinguiſhed when they are gone for ever, and cannot be revived; that is, when one hath as great and durable Eſtate in the one as in the other. Co. Litt. 213. a.

Suſpenſion, what.

Extinguiſhment, what

B Perſonal Actions once ſuſpended are for ever ſuſpended. *Cro. Car.* 373.

Perſonal Actions once ſuſpended are for ever ſuſpended.

C When Part of the Condition was ſuſpended, the whole Condition, as well for the Payment of the Rent, as of doing a collateral Act, is ſuſpended. 4 *Rep.* 52.

Where Part of a Condition is ſuſpended, the whole is ſuſpended.

D If the Obligee makes the Obligor his Executor, this is a Releaſe in Law of the Action; but the Duty remains, and ſhall be Aſſets in his Hands. See *Co. Litt.* 264. *b.*

Obligee makes the Obligor his Executor.

E If the Feme Obligee takes the Obligor to Huſband, or if a Man Debtee takes the Debtor to Wife, *Cro. Car.* 373. this is a Releaſe in Law; and ſo it is if there be two Obligees, and the one takes the Debtor to Huſband, *Ibid.*

Feme Obligee marries the Obligor.

F If a Feme Executrix marries the Debtor to her Huſband; this is no Releaſe in Law; for that would be a Wrong to the Dead, and would work a *Devaſtavit* in Law, which an Act in Law ſhould never do. *Ibid.* See Title Executors.

Feme Executrix marries her Huſband's Debtor.

Where the Executor of the Debtor is made Executor of the Debtee, he hath nothing in his own Right.

Where the Executor of the Debtor is made Executor to the Debtee, he hath nothing thereby in his own Right, but is only to uſe an Action in the Right of another. *Cro. Car.* 372. *pl.* 7. 373. A

Rent may be ſuſpended for a Time.

A Rent may be ſuſpended by Unity for a Time, and afterwards revived again. *Vaugh.* 39. B

What is a Suſpenſion of Rent.

A Suſpenſion of Rent is, when either the Rent or Land are ſo conveyed, not abſolutely and finally, but for a certain Time, after which the Rent will be again revived. *Vaugh.* 109. C

What Entry of the Leſſor will ſuſpend the Rent.
How to be recontinued.

If the Leſſor doth any Thing which amounts to an Entry, although he departs preſently, yet the Poſſeſſion is in him ſufficient to ſuſpend the Rent, and he ſhall be ſaid *extratenere* the Defendant until he hath done an Act which amounts to a Re-entry. 1 *Leon.* 110. Caſe 149. D

A Condition of Re-entry is ſuſpended upon an Extent upon an *Elegit.*

A Judgment is had againſt the Leſſor, who let for Years, rendring Rent with a Condition of Re-entry, the Reverſion and Rent is extended upon an *Elegit*, the Condition is ſuſpended during the Extent as well in the one as the other. 4 *Leon.* Caſe 322. E

Incloſing of a Common is no Suſpenſion of Rent.

Rent is not iſſuing out of a Common; ſo that the Leſſor's incloſing the Common cannot ſuſpend his Rent. *Cro. Jac.* 679. *pl.* 16. F

Senior Fellows of a College.

Where an Act is appointed to be done by four ſenior Fellows of a College, the Suſpenſion of any of them does not make the next in Order ſenior Fellows, ſo as to be qualified to do that Act. *Skin.* 460, 464, 474, 484. G

Tail.

Tail.

See **Baron and Feme.** **Eſtates.** **Fee-ſimple.** | **Fine.** **Inheritance.** **Recovery.**

A **Tenant in Fee-tail is by Force of the Statute of** Weſtm. 2. cap. 1. **and is in two Manners, viz. Tail General and Tail Special.** Litt. Sect. 13.

Tail, what.
Weſtm. 2. cap. 1.

B **Before** the Statute *de donis conditionalibus*, *Weſtm.* 2. all Inheritances were Fee-ſimple, but the Donee had no Power of aliening till *poſt prolem ſuſcitatam*; then came this Statute, and ſays, That *voluntas donatoris ſecundum formam doni in charta doni ſui manifeſte expreſſam de cætero obſervetur, &c.* and ſo provides that the Donees ſhall not alien, but that the Eſtate ſhall remain to the Iſſue of the Donee, or to the Donor or his Heirs, where there are no Iſſue. Now upon the Conſtruction of this Statute the Judges have adjudged, that the Donees ſhall not have a Fee-ſimple (which before they had) but they divided the Eſtates, and created a particular Eſtate in the Donee, and a Reverſion in the Donor; ſo as where the Donee had a Fee-ſimple before, by this Act he had but an Eſtate-tail, and the Donor a Reverſion in Fee expectant upon that Eſtate-tail; ſo that here the Donee after Iſſue nor before, cannot bar nor charge his Iſſue, nor the Donor or his Heirs for want of his Iſſue, by Alienation, Forfeiture, or any other Charge. See *Co. Litt.* 19. *a. b.* 2 *Inſt.* 335. So it continued until the Time of *Edward* the Fourth, where the Judges found out a Way to bar an Eſtate-tail with Remainders over by a feigned Recovery. See *Taltarum*'s Caſe, 12 *E.* 4. *fol.* 19. *a. b. pl.* 25. and ſince by a Fine to bar the Iſſues by 4 *H.* 7. *cap.* 20. and 32 *H.* 8. *cap.* 36.

All diſcendible Eſtates Fee-ſimple before the Statute *de donis*.
Weſtm. 2. cap. 1.

The Subſtance of the Statute.

The Conſtruction of it.

How come to be an Eſtate-tail.

The Conſequences of it.

Of common Recoveries.

4 H. 7. cap. 20.
32 H. 8. cap. 36.

C **Note**, The Statute *de donis* creates no Intail but of ſuch an Eſtate, which was a Fee-ſimple at the Common Law, and diſcendible as a Fee-ſimple. *Co. Litt.* 19. *a.*

Of Fines to bar Intails.

A Deviſe to the Heirs Male is an Intail.

A **A Deviſe** to a Man and his Heirs Male (without *Body*) is an Intail; but it is otherwiſe in caſe of a Gift. 27 *H.* 8. *cap.* 27. *Hob.* 32. *Litt. Sect.* 31. See Title **Fee-ſimple.** *Litt. Rep.* 6. ſays it is a Fee-ſimple.

Tail General, what.

B **Tenant** in Tail General is where Lands are given to a Man, and the Heirs of his Body begotten: Now if he marries ſeveral Wives, and hath Iſſue by every of them, every one of theſe Iſſues by Poſſibility may inherit; ſo alſo it is in the Caſe of a Gift to a Woman, and the Heirs of her Body. *Litt. Sect.* 14, 15. Becauſe every ſuch Iſſue is begotten of the Body. *Ibid.*

Tenant in Special Tail, who ſhall be.

C **Tenant** in Tail Special is where Lands are given to a Man and his Wife, and the Heirs of their two Bodies to be begotten; and here none ſhall inherit, but thoſe that be begotten between them two. *Litt. Sect.* 16. So that here the Iſſue of a ſecond Wife ſhall not inherit. *Ibid.*

Where the Huſband is Tenant for Life, and the Wife is Tenant in Tail.

D **In** all Gifts in Tail it is the Word *Heirs* that makes the Inheritance; for if Lands are given to a Man and his Wife, and the Heirs of the Body of the Wife by the Huſband to be begotten: The Huſband hath but an Eſtate for Life, and the Eſtate-tail is in the Wife, becauſe of the Word *Heirs* which goes only to the Wife. But if it had been to the Heirs which the Huſband ſhould have got of the Body of the Woman, or to the Heirs which the Huſband ſhould beget on the Body of the Woman, in theſe Caſes it is an Intail in both. *Yelv.* 131. 1 *Brownl.* 211.

To a Man and his eldeſt Iſſue male is only for Life.

E **A Deviſe** to a Man and the eldeſt Iſſue Male of his Body, this is but an Eſtate for Life in the Father, and alſo an Eſtate for Life in the Son. 2 *Leon.* 45. But to one and his Iſſue Male is an Eſtate-tail, but the Word *eldeſt* will not admit of that Conſtruction. *Cro. El.* 40.

Tenant in Tail, Remainder in the Crown, levies a Fine, it bars his Iſſue.

F **Tenant** in Tail, Remainder to the King, levies a Fine, had Iſſue and died; the Iſſue is barr'd, and yet the Remainder in the Crown is not diſcontinued. 4 *Leon.* Caſe 108.

Tenant in Tail covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his eldeſt Son in Fee, and then levies a Fine to a Stranger; this bars the Son.

G **Tenant** in Tail covenants to ſtand ſeiſed to the Uſe of himſelf for Life, and afterwards to the Uſe of his eldeſt Son in Fee; and then levies a Fine to a Stranger: And it was adjudged, That when Tenant in Tail covenanted to ſtand ſeiſed to the Uſe of himſelf for Life, that is as much as he can do, and the Limitation over is void, and he remained Tenant in Tail as before. *Cro. El.* 895. *pl.* 15.

To two and the Heirs Male of their Bodies, are ſeparate not joint Eſtates.

H **Where** a Remainder is limited to two, and the Heirs Male of their Bodies, they have not joint but ſeveral Eſtates-tail. *Cro. Eliz.* 220.

To a Baſtard *in eſſe*, not to a Baſtard before born.

I **A Limitation** of an Eſtate-tail to a Baſtard *in eſſe* is good, not to a Baſtard before born. *Cro. El.* 509. *pl.* 34. 510.

A **An** Eſtate-tail cannot merge by the Acceſſion of the Fee-ſimple to it. 8 *Rep.* 74. *b.* 2 *Rep.* 61. *a.*

An Eſtate-tail cannot merge in a Fee-ſimple.

B **Tenant** in Tail, Remainder in Tail; Tenant in Tail enfeoffs the Reverſioner in Fee; it is a Diſcontinuance. 1 *Rep.* 140. *a.*

Tenant in Tail, Remainder in Tail, Tenant in Tail enfeoffs him in Reverſion in Fee, it is a Diſcontinuance.

C **If** Lands are given to a Man *& hæredibus de corpore ſuo*, Remainder to *B. in forma prædicta*; this is an Eſtate-tail in *B.* becauſe *in forma prædicta* includes the other. *Co. Litt.* 20. *b.*

To a Man and the Heirs of his Body, Remainder *in forma prædicta*, is a good Intail.

D **Lands** are given to a Man and his Seed, or to a Man and his Iſſues, or to a Man and the Children of his Body; theſe are but Eſtates for Lives, for that there wanteth Words of Inheritance. *Co. Litt.* 20. *b.* 1 *Rep.* 103. *b.*

To a Man and his Seed, or Iſſue, or Children, theſe are but Eſtates for Life, and why.

E **To** a Man *& hæredibus de carne, hæredibus de ſe, quos ſibi contigerit*, &c. are good Intails; becauſe of the Word *Heirs*, and alſo of the Perſon of the Man. *Co. Litt.* 20. *b.*

To a Man *& hæredibus de carne, hæredibus de ſe, &c.* is a good Intail, and why.

F **Note,** Though it be *begotten*, or *to be begotten*, it is a good Eſtate-tail: For as *begotten* ſhall extend to Iſſues begotten before, ſo *to be begotten* ſhall extend to Iſſues begotten afterwards. *Ibid.*

Begotten, and to be begotten, how to extend.

G **Where** Lands are given to a Man and his Heirs Male or Female, this is a Fee-ſimple; becauſe it is not limited from what Body the Iſſue Male or Female ſhall iſſue: For it is the Word *Body* that makes the Intail. *Litt. Sect.* 31. *Co. Litt.* 27. *a.* See *Bereſford*'s Caſe, 7 *Rep. Litt. Rep.* 6, 7, 8.

Heirs Male or Female makes a Fee.

It is the Word *Body* makes the Intail.

H **It** is requiſite in all Gifts and Limitations of Uſes to make an Eſtate-tail, that the Heirs be limited to be begotten of ſome Body, either by expreſs Words, or Words which tantamount. *Bereſford*'s Caſe, *Rep.* 7.

The Word *Body* is the operative Word.

I **If** Tenant in Tail agrees to convey, he is bound by that Agreement; but if he die, his Iſſue is not. *Chanc. Rep.* 172.

Where Tenant in Tail is bound to convey, but his Iſſue is not.

K **Where** there is a Covenant to levy a Fine upon a valuable Conſideration, and a Decree in purſuance thereof, this ſhall bind the Iſſue; becauſe the Covenantor had Power by Fine to do it. *Chanc. Rep.* 294.

Where the Covenant of Tenant in Tail to levy a Fine binds his Iſſue.

L **An** Agreement to intail, is no Intail; and tho' it raiſed an Equity againſt him that made it, yet that Equity is a Creature of the Court, to be governed as Conſcience directs by this Court. But no Agreement ſhall bind the Iſſue in Tail, where there is a firſt Intail, without Fine or Recovery. *Chanc. Rep.* 236.

An Agreement to intail is governed and directed in Chancery.

But no Agreement ſhall bind the Iſſue in Tail without a Fine or Recovery.

When a Tenant in Tail cannot diſcontinue.

Tenant in Tail cannot diſcontinue, unleſs he be A
ſeiſed by Force of the Intail, if it be not by reaſon of Warranty. *Litt. Rep.* 8.

Covenant to ſtand ſeiſed is no Diſcontinuance, and his Recovery ſhall bar it.

Tenant in Tail covenants to ſtand ſeiſed to the B
Uſe of himſelf for Life, with Remainder in Tail, and after ſuffers a Recovery and dies: And adjudged, That this ſhall bar the ancient Intail; becauſe the Covenant to ſtand ſeiſed makes no Alteration of the Eſtate of the Tenant in Tail. *Moor*, Caſe 940.

A Deviſe to Heirs of the Body for five hundred Years is but a Term.

A Man deviſes to his Son and the Heirs Male of C
his Body for five hundred Years; this is but for Years, becauſe it is ſo in expreſs Words in the Will. 10 *Rep.* 87. *a.* *Moor*, Caſe 1067.

Several Moieties of an Eſtate-tail may be between Baron and Feme.

Between Baron and Feme ſeveral Moieties may D
be of an Eſtate-tail, as well as of a Fee-ſimple. *Moor*, Caſe 228.

Remainder *ſeniori puero*; if the Daughter is eldeſt ſhe ſhall have it.

A Man levies a Fine to himſelf for Life, Re- E
mainder to his eldeſt Child in Tail; he hath Iſſue a Daughter, then a Son; the Daughter ſhall have it. *Moor*, Caſe 248. See Title **Purchaſe** and **Remainder**.

A Deviſe for Life, the Heir a Purchaſor; the Inheritance in Abeiance, *quouſque*.

A Deviſe to his Daughter for Life; and if ſhe F
marry and have Iſſue, then her Heir after her Death ſhall have the Land, and to the Heirs of their Bodies begotten, Remainder to a Stranger in Fee; this is only for Life in the Daughter, and the Inheritance in her Heir by Purchaſe, being in Abeiance during her Life, and ſettling at the Inſtant of her Death. *Moor*, Caſe 803.

A Term for Years cannot be intailed.

Where a Term for Years is deviſed to one and G
the Heirs Male of his Body, his Heir Male ſhall not have it, but his Executors; for a Term, which is but a Chattel, cannot be intailed; and ſuch Deviſee may alien the Term to whom he pleaſes. 10 *Rep.* 87.

An Equity of Redemption not intailable.

An Equity of Redemption not intailable with- H
in the Statute *de donis*. *Chanc. Rep.* 219.

When Tenant in Tail, Iſſue and Remainders are bound.

A Decree to foreclose Tenant in Tail from re- I
deeming, binds his Iſſue and the Remainders. *Ibid.* 220.

Leaſe by Tenant in Tail.

Where Tenant in Tail makes a Leaſe to com- K
mence after his Death, of any of the Lands in Tail, 'tis void. *Carthew* 258.

Of his Power to make Leaſes. *Carthew* 257. L

How created.

By what Words an Eſtate-tail may be created. M
Salk. 621.

Of the Word *of*.

The Word *of* in *Engliſh*, is equal to *de* or *ex* in N
Latin, in making Eſtates-tail. *Salk.* 622.

Of whoſe Body, *&c.*

In a Gift in Tail, it muſt appear of what Body O
the Iſſue are to come. *Salk.* 621.

Tail.

A **To** *B.* and the Heirs Males of the ſaid *B.* lawfully begotten, and for Default, *&c.* over, is a Tail. *Salk.* 621.

What is a Tail.

B **Bargainee** of Tenant in Tail has a deſcendible Eſtate. *Salk.* 619.

Eſtate deſcendible.

C **What** Conveyances by Tenant in Tail are defeazable by the Iſſue. *Ibid.*

Eſtate defeazable.

D **Covenant** by Tenant in Tail to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to *A.* in Tail, is void. *Ibid.* Becauſe the Remainder is to take Effect after his Death. *Ibid.*

Covenant by Tenant in Tail.

E **Tenant** in Tail covenants to ſtand ſeiſed to the Uſe of *A.* and his Heirs, or of *A.* for Life, with Remainders; it veſts the Eſtate-tail. *Salk.* 690. *Aliter* if the new Uſe be to take Effect after his Death. *Ibid.*

Covenant to ſtand ſeiſed.

F **A Surrender** to *A.* for Life, Remainder to *A.* and his Wife, and their Heirs and Aſſigns; and for Default of ſuch Iſſue to *A.* and his Heirs, is a Fee in *A.* and his Wife. *Salk.* 620.

Where a Surrender creates a Fee.

G **Baron** and Feme Tenants in ſpecial Tail of the Proviſion of the Huſband, have Iſſue, the Baron dies, the Iſſue levies a Fine to a Stranger; the Feme leaſes for ſixty Years and dies; held that Leaſe was good againſt the Conuſee. *Skin.* 31, 36.

A Leaſe good againſt the Conuzee of a Fine.

H **Where** an Eſtate-tail is conſtrued to be executed. 3 *Salk.* 292, 337, 338.

A Tail executed.

I **Deviſe** to the Iſſue of his Body, whether it makes an Eſtate-tail. 3 *Salk.* 296.

A Deviſe.

K **Where** a Leaſe made by Tenant in Tail ſhall bind his Iſſue. 3 *Salk.* 336.

A Leaſe to bind Iſſue.

L **Where** a Remainder was deviſed to his right Heirs Males, it ſhall be intended right Heirs Males of his Body. *Ibid.*

Where a Remainder conſtrued in Tail.

M **Feoffment** to the Uſe of *W. R.* for Life, Remainder to the Son of the Feoffor and his Heirs; and for want of Iſſue of him, to the right Heirs of the Feoffor; the Son hath an Eſtate-tail. 3 *Salk.* 337.

Where the Son takes an Eſtate Tail.

Tales.

See { Jury.
Trial.

Tales, what.

TALES **are of two Sorts,** viz. Tales de Circumſtantibus; **or, A** Decem Tales. **A** Tales de Circumſtantibus **is where a full Jury do not appear at the** Niſi prius, **or where ſo many are challenged that there is not a full Jury; then upon the Prayer of the Plaintiff's Counſel or Attorney, the Judge will grant a** Tales de Circumſtantibus, **which the Sheriff returns immediately in Court: A** Decem Tales **is, when a full Jury doth not appear at a Trial at the Bar, then there goes out a Writ to the Sheriff** apponere Decem Tales. A

If a Jury do not appear full on a Trial at Bar, the Court will grant a *Decem Tales.*

Upon a Trial at the Bar, if the Jury do not appear full, the Court cannot grant a *Tales de Circumſtantibus*, but the Court upon a Motion will grant a *Decem Tales* returnable in ſome convenient Time the ſame Term to try the Cauſe. (*Mich.* 22 *Car. B. R.* 1650. *B. R.*) For the Statute doth not extend to Trials at the Bar, which did enable the making of a *Tales de Circumſtantibus*. B

Not granted where the whole Jury is challenged for want of Hundredors.

A *Tales* is not to be granted where the whole Array or Jury is challenged for want of Hundredors; but in ſuch Caſe the whole Panel, if the Challenge be made good, is to be quaſh'd, and a new Jury is to be returned. (*Mich.* 1650. *B. S.*) For a *Tales* conſiſts but of ſome Perſons to ſupply the Places of ſuch of the Jurors as wanted of the Number of Twelve, and is not to make a new Jury. See the Statute. C

Where without a Warrant, and where not.

Without a Warrant in Information *qui tam*, *&c.* but not in Indictments without Warrant of the King's Counſel. 1 *Lev.* 223. D

A **Where** the King is a Party, if there ſhall not at *Niſi prius* a full Jury appear, then upon Requeſt made for the King by any one authorized thereto, or aſſigned by the Court where the Inqueſt is to be taken, or upon the Requeſt of the Party *qui tam, &c.* upon a penal Statute, or his Attorney, to command the Sheriff to return a *Tales*, the Sheriff ſhall add the Names of the *Tales* to the former Panel.

How a *Tales* is granted where the King is a Party.
4 & 5 **P. & M. cap.** 7.

B **No** Perſon ſhall take any Reward or Fee upon the Account of any *Tales* returned, upon Pain to forfeit 10 *l.* one Moiety to the Informer, and the other to their Majeſties, by the Statute of 4 *&* 5 *W. & M. cap.* 24. *ſect.* 21.

No Fees to be taken upon account of a *Tales* returned.
4 & 5 **W. & M. c.** 24. **Sect.** 21.

C **A Corporation-Court** cannot grant a *Tales*, for the Statute of 35 *H.* 8. *cap.* 6. *ſect.* 6. doth not extend unto Corporations.

A Corporation Court cannot grant a *Tales*.
35 **H.** 8. **cap.** 6. **Sect.** 6.

D **One** Juror only appears upon the principal Panel, the Court may order a *Tales* by the Statute of 35 *H.* 8. *cap.* 6. 10 *Rep.* 102, 103, &c. *Cro. Jac.* 316. *pl.* 19.

A *Tales* may be granted, if but one of the Panel appears.
35 **H.** 8. **cap.** 6.

E **By** an Act made 14 *Eliz. cap.* 9. it is enacted, That the Tenant or Defendant may have a *Tales de Circumſtantibus* as well as the Demandant or Plaintiff.

The Defendant or Tenant may pray a *Tales*.
14 **Eliz. cap.** 9.

F **That** in all popular Actions *qui tam* upon penal Statutes, the Defendant ſhall be admitted to pray, and have a *Tales de Circumſtantibus*, as in other Caſes.

G **A** *Tales* ſhall be granted upon a *Medietas Linguæ*. 10 *Rep.* 104. *a.* See *Poph.* 35, 36.

A *Tales* upon a *Medietas Linguæ*.

H **A** *Tales de Circumſtantibus* ought not to be in an Aſſiſe, but only in a *Niſi prius*; but a *Decem Tales* muſt be awarded there, and in a Trial at Bar. *Cro. Car.* 341. *pl.* 6.

A *Tales de Circumſtantibus* is Error in an Aſſiſe, but it muſt be a *Decem Tales*.

I **If** upon an *Hab. Cor. Jur.* or a *Diſtringas Jur.* none of the Jury appear, yet a *Decem Tales* ſhall be awarded; but it ſhall not be awarded upon a *Venire Fa. Cro. Eliz.* 502. *pl.* 24. 503.

When a *Decem Tales* ſhall be awarded.

Tenant at Sufferance.

Who is a Tenant at Sufferance.

TEnant at Sufferance is he who comes in by a lawful Demiſe, and after his Term ended continues the Poſſeſſion wrongfully, and holds over. Co. Litt. 57. b. A

Every Tenant at Sufferance is made by the Laches of his Leſſor. 2 Leon. fol. 143.

Where a Man may diſtrein Tenant at Sufferance for Rent due at the Determination of his Eſtate.

8 **Annæ.**

Where Tentants *per auter vie*, for Years, or Will, do frequently hold over the Lands let after the Determination of their Eſtates, it is enacted, That where any ſuch Rent is in arrear at ſuch Determination, the Leſſor may, within ſix Kalendar Months after ſuch Determination, and during the Continuance of the Leſſor's Title and the Tenant's Poſſeſſion, diſtrein for ſuch Arrears. B

He cannot grant a Copyhold Eſtate.

If Tenant at Sufferance grants a Copyhold Eſtate, the Grant is void. 2 *Leon. Caſe* 59. C

A Leaſe made by Tenant at Sufferance is a Diſſeiſin.

Tenant at Sufferance makes a Leaſe for Years; this is a Diſſeiſin, and turns the Eſtate to a Right. *Carter* 162. D

Where Tenant at Sufferance ſows, the Owner of the Land upon his Entry ſhall have the Corn

Tenant at Sufferance ſows the Land, and the Party who hath Right enters before Severance; the Party entring ſhall have the Corn with his Lands as he finds it, it being the Folly of him who ſowed without Title. *Co. Litt.* 57. *b.* But until Entry the Right is in the Tenant, becauſe he hath the Poſſeſſion; ſo that the Owner of the Land hath no Remedy for the Corn, nor can bring Treſpaſs until an actual Entry. E

Treſpaſs lies not againſt Tenant at Sufferance *ſans* actual Entry.

If a Leſſee holds over his Term, the Leſſor cannot bring an Action of Treſpaſs without an actual Entry. 5 *Mod.* 384. F

After a Leaſe is expired, continuing the Poſſeſſion and Payment of the Rent is a new Leaſe.

Where Tenant for Years holds over his Term, and continues to pay his Rent quarterly as before, this Payment and Acceptance of the Rent amounts to a new Leaſe. *Aleyn* 4. G

A **An** Intruder cannot be Tenant at Sufferance, becauſe at firſt he enters by Wrong, and none can be Tenant at Sufferance, but he that comes in by Title. 2 *Leon. Caſe* 182.

An Intruder cannot be Tenant at Sufferance.

B **A Releaſe** of the Right to a Tenant at Sufferance is void. 3 *Leon. Caſe* 204.

A Releaſe to him is void.

C **A Deviſe** to one for Life upon Condition that his Eſtate ſhall ceaſe, and after Breach of the Condition he continues in Poſſeſſion; he is but Tenant at Sufferance. *Ibid.*

Tenant for Life forfeits his Eſtate, and continues the Poſſeſſion, he is but Tenant at Sufferance.

Tenant at Will.

See **Leaſes.**

D **Tenant at Will is where Lands are let by one Man to another, to hold to him at the Will of the Leſſor: Now here the Law implies it to be at the Will of the Leſſee alſo; for it cannot be only at the Will of the Leſſor, but it muſt be at the Will of the Leſſee alſo.** Co. Litt. 55. a.

Tenant at Will, how it is.

E **Tenant** at Will *de anno in annum quamdiu ambabus partibus placeret*, after the Commencement of the Year cannot determine his Will to the Prejudice of the Leſſor for his Rent. *Jones* 5. 2 *Keb.* 260. *pl.* 10.

He cannot determine his Will to his Leſſor's Prejudice.

F **Tenant** at Will made a Leaſe from Year to Year; it is no Diſſeiſin, but the Leaſe is void. 4 *Leon. Caſe* 95. See Title **Diſſeiſin.**

Tenant at Will leaſes over, it is no Diſſeiſin, but it is a void Leaſe.

G **If** Tenant at Will rendring Rent quarterly, begins a new Quarter, and voluntarily determines the Will before the Quarter ended, yet he ſhall pay the Rent for that Quarter. *Aleyn* 4.

Where he determines his Will within a Quarter, he ſhall pay the whole Quarter.

H **Tenant** at Will cut down Trees, and the Leſſor brought Treſpaſs againſt him *Vi & Armis*, and held good; tho' *Littleton*, *Sect.* 25. ſays nothing of *Vi & Armis*. *Cro. Eliz.* 777. *pl.* 10. *Cro. Car.* 187. *pl.* 7. See Title **Actions.**

Treſpaſs lies againſt him for cutting down of Trees.

Not puniſhable for negligently keeping of his Fire.

Caſe lies not againſt him for ſo negligently keeping of his Fire, that his Houſe was burnt down. *Cro. Eliz.* 777. A

He can neither grant nor ſurrender.

Tenant at Will can neither grant or ſurrender. *Cro. Eliz.* 156. *pl.* 39. B

Where the Party occupies for Part of a Year and dies, he ſhall pay the Rent for that Year.

A Leaſe is let *de anno per annum quamdiu ambabus partibus placeret*, the Teſtator occupied it for two Years, and Part of the third Year, and died; and Debt was brought for the third Year. *Curia.* This is a Leaſe certain for two Years, and when he enjoys it Part of the third, it is a Leaſe for that Year alſo. *Cro. Eliz.* 775. *pl.* 6. C

Tenant by Courteſy.

What makes a Man Tenant by Courteſy.

Tenant by Courteſy is where a Man marries a Wife ſeiſed in Fee-ſimple, Fee-tail General, or as Heir in Special Tail, and hath Iſſue born alive, whether it lives or dies; yet if the Wife dies, the Huſband ſhall hold the Land during his Life as Tenant by the Courteſy. Co. Litt. 29. a. D

Where the Huſband ſhall be Tenant by the Courteſy, after the Determination of the Wife's Eſtate.

So alſo in this Caſe.

A Man had two Daughters, and gives Lands to the eldeſt and the Heirs of her Body, Remainder to the youngeſt and the Heirs of her Body; the eldeſt marries, and had Iſſue born living, and died, then the Mother died without Iſſue; it was objected, That the Huſband ſhould not be Tenant by the Courteſy, becauſe the Wife's Eſtate was determined, and the Huſband's Eſtate, which was derived out of it, could not continue: But adjudged, That he ſhall be Tenant by the Courteſy. 8 *Rep.* 34, to 36. E

The Huſband ſhall be Tenant by the Courteſy after his Wife's Eſtate is determined.

Where a Woman ſeiſed to the Heirs of her Body, marries, and hath Iſſue, and dies, and the Iſſue dies, the Wife's Eſtate is determined, yet her Huſband ſhall be Tenant by the Courteſy; becauſe it is tacitly implied in the Gift, that it muſt be ſuch an Iſſue as by Poſſibility may inherit. 8 *Rep.* 34, 35. *a.* F

A **A Woman** died in Childbed, and the Child was ripp'd out of her Belly: This will not do to make a Tenant by the Courteſy; becauſe the Iſſue ought to be conſummate with the Death of the Mother.

A Child ripp'd out of the Mother's Belly, will not do it.

B **Where** Lands are given to a Woman, and the Heirs Male of her Body, and ſhe hath Iſſue only Females: This will not do. 8 *Rep.* 35. *b.*

It muſt be ſuch an Heir as can inherit.

C **Where** Lands are given to Huſband and Wife, and the Heirs of their two Bodies begotten, they have Iſſue, the Huſband dies, the Wife marries again, the ſecond Huſband hath Iſſue; he ſhall be Tenant by Courteſy. *Ibid.*

It muſt be from an actual Seiſin, not a Seiſin in Law.

D *Littleton* ſays, as Heir to the Wife. This is the true Reaſon the Huſband ſhall not be Tenant by the Courteſy upon a Seiſin in Law; for in ſuch Caſe the Iſſue ought to make himſelf Heir to him who was laſt actually ſeiſed. 8 *Rep.* 36. *a.*

There ſhall be no Tenancy by the Courteſy upon a Seiſin in Law.

E **There** ſhall be no Tenancy by the Courteſy of a Copyhold Eſtate, unleſs there be a particular Cuſtom for it. *Cro. Eliz.* 361. *pl.* 22.

No Tenancy by the Courteſy of a Copyhold Eſtate.

F **The** Alienation of Tenant by the Courteſy with Warranty, unleſs Aſſets of an Eſtate of Inheritance to the Value of the Eſtate aliened, diſcended to him from the Alienor, is void.

Tenant by the Courteſy aliens with Warranty; it is void, unleſs Aſſets diſcend.

Stat. Gloc. 6 E. 4. cap. 3.

Tenant for Life.

See {**Emblements.**
Forfeiture.
Leaſes.

G **Tenant for Life is he who holds an Eſtate for his own Life, and is puniſhable for Waſte, and may commit a Forfeiture.**

Tenant for Life, what.

The Executor of Tenant for Life, and not the Remainder-man ſhall have the Hops.

Tenant for Life plants Hops, and dies in *Auguſt* before Severance; his Executor and not the Remainder-man ſhall have the Crop, *Cro. Car.* 515. *pl.* 13. See in Title **Emblements**, who ſhall have the Corn, and who the Apples, *&c.* A

A Leaſe to a Man for his own and the Lives of two others, is a good Leaſe for all the three Lives.

The Queſtion was, Whether a Leaſe to one for his own Life, and the Lives of two others, be a longer Eſtate than for his own Life only? It was adjudged, That it was good for all the Lives. *Cro. Eliz.* 491. *pl.* 8, 492. B

All Warranties by Tenant for Life ſhall be void. 4 & 5 **Annæ.**

By the Statute of 4 *&* 5 *Annæ*, it is enacted, That all Warranties to be made by any Tenant for Life, of any Lands, Tenements or Hereditaments, the ſame diſcending or coming to any Perſon in Reverſion or Remainder, ſhall be void. C

Recovery ſuffered by Tenant for Life, is a Forfeiture.

Leſſee for Life bargains and ſells in Fee, afterwards he ſuffers a Recovery to the Uſe of the Bargainor, this is a Forfeiture. *Moor*, *Caſe* 423. D

Tenant for Life, Remainder in Tail, Reverſion in Fee, enfeoffs the Reverſioner, this is a Forfeiture.

Tenant for Life, Remainder in Tail, Reverſion in Fee; Tenant for Life enfeoffs him in the Reverſion; this is a Forfeiture of his Eſtate, and ſhall diveſt the Eſtate-tail in the Remainder. 1 *Rep.* 140. *a.* E

Acceptance of a Fine *ſur* Conuſance, is a Forfeiture.

If Tenant for Life takes a Fine *ſur Conuſance de droit*, it is a Forfeiture. 3 *Leon. Caſe* 61. F

The Law allows his Executor a convenient Time to remove his Effects.

The Law allows the Executor or Tenant for Life a convenient Time for removing of the Goods and Cattle after the Death of Tenant for Life. *Cro. Jac.* 204. *pl.* 6. G

Termino nondum finito implies the Life of the Tenant for Life.

Termino nondum finito upon a Leaſe of Tenant for Life implies that he is living. *Cro. Jac.* 622. H

So alſo doth *adhuc ſeiſitus exiſtit.*

So where is in a Declaration *adhuc ſeiſitus exiſtit*, implies his Life. *Dyer* 304. I

Tenant in Common.

See {**Jointenants.**
{**Partition.**

A **Tenancy in Common is where two Men have Lands by ſeveral Titles; or where a Feoffment or other Conveyance is made to two,** Habend' **the one Moiety to one, and the other Moiety to the other: It is alſo of Goods and Chattels.**

Tenancy in Common, what.

B **Jointenants** and Tenants in Common, of any Eſtate of Inheritance in their own or their Wives Right, are compellable to make Partition by Writ *De participatione faciendi*, to be deviſed in the Court of Chancery, in like Manner as Coparceners have been compelled: And alſo that each of them and their Heirs may have Aid of the other or their Heirs: Alſo Jointenants and Tenants in Common for Lives or Years may have it.

Jointenants and Tenants in Common may ſue out a Writ of Partition.
32 **H.** 8. cap. 1.
32 **H.** 8. cap. 32.

C **How** Tenants in Common ſhall preſent to an Advowſon by the Statute of 7 *Annæ* after a Partition made between them to preſent by Turns. See in Title **Partition.**

How they ſhall preſent to an Advowſon after a Partition.
7 **Annæ.**

D **They** cannot join in an Action of Waſte againſt their Leſſee. *Moor, Caſe* 110.

They cannot join in Waſte.

E **Caſe** doth not lie for one Tenant in Common of an Horſe, *&c.* againſt another for diſpoſing of the whole; becauſe by the Law every Tenant in Common hath Power to diſpoſe of the whole. 1 *Lev.* 29. See *Litt. Sect.* 222. But now by the Statute of 4 & 5 *Annæ*, which ſee in Title **Account,** an Action of Account lies for one Jointenant and Tenant in Common againſt the other, their Executors and Adminiſtrators for their juſt Share and Proportion of the Profits.

What Remedy one Tenant in Common hath againſt the other.
4 & 5 **Annæ.**

F **Dower** lies againſt a Tenant in Common before Partition. 3 *Lev.* 84.

Dower lies againſt Tenant in Common before Partition.

G **Two** Coparceners, the one aliens his Part to *J. S.* the other Parcener and the Alienee are Tenants in Common. *Litt. Sect.* 309.

One Coparcener aliens, the Alienee and the other Parcener are Tenants in Common.

Tenants in Common join in a Leaſe, they may ſever in Actions.

Two Tenants in Common join in a Leaſe, they A may join or ſever in Actions, ſhewing the Special Matter. 4 *Jac.* 2. *B. R.*

A Deviſe to three, Share and Share alike, is a Tenancy in Common.

A Deviſe to three, Share and Share alike, with- B out the Words equally to be divided, is a Tenancy in Common. *Garret* and *Higby*. 5 *W. & M. B. R.* See Title **Deviſe.**

A Deviſe to his Sons and their Heirs, and all to have Part and Part alike.

A Man deviſes to his five Sons and their Heirs C and Aſſigns, all of them to have Part and Part alike; the one to have as much as the other, is a Tenancy in Common. *Litt. Rep.* 46.

Where a Deviſe to two equally to be divided is a Tenancy in Common.

Where a Jointenancy.

A Deviſe to two *equally to be divided between* D *them. Catlin* and *Wray*. They are Tenants in Common. *Southcote*. They are Jointenants; becauſe the Words refer to a Diviſion to be made, and in the mean Time they are Jointenants. *Dal.* 90. *pl.* 10.

A Deviſe of Lands to two equally is a Tenancy in Common.

Where a Jointenancy.

But not ſo of Goods; nor of the Deviſe of a Term.

A Man deviſes Lands to his Sons equally, and E their Heirs; this is a Tenancy in Common, by reaſon of the Word *Heirs*; but where Lands are deviſed to two equally, they are Jointenants: But it is not ſo in caſe of a Deviſe of Goods; ſo upon a Deviſe of a Term to two equally, they are Tenants in Common. *Cro. Eliz.* 605. *pl.* 6. 606.

Surrender to three of a Copyhold, *& æqualiter dividend'*, is a Jointenancy, and why.

A Man ſurrenders his Copyhold Lands to his F three Sons, *& eorum reſpectivis hæredibus equaliter dividend'*; whether this was a Jointenancy or Tenancy in Common, was the Queſtion: And held, That if it had been in a Will, it had been a Tenancy in Common; but being in a Surrender, which is a Common Law Conveyance, it is a Jointenancy: But to make it a Tenancy in Common, it ſhould have been to his three Sons, *viz.* one third Part to one Son and his Heirs, another third to another Son and his Heirs, and the other to his other Son and his Heirs. 5 *W. & M. B. R.* See Title **Deviſe.**

Tenants in Common, Deviſees, may join or ſever in Debt for Rent: But muſt ſever in an Avowry, and why.

Tenants in Common, Deviſees, may join or ſever G in an Action of Debt for Rent, upon a Leaſe granted by the Deviſor: But in an Avowry they muſt ſever, becauſe that is in the Reality only. 5 *W. & M. B. R. Carthew* 289.

In what Actions they may join.

Tenants in Common may not join in perſonal H Actions, but may join in real ones. 1 *Lev.* 109.

He may ſolely defend or take a Diſtreſs.

A Tenant in Common may ſolely defend, or he I only may take a Diſtreſs, although his Avowry is by way of Action, and yet he may juſtify it. *Cro. Eliz.* 530. *pl.* 60.

Tenants in Common may join in an Action for a Nuſance.

Tenants in Common may join in an Action on K the Caſe for a Nuſance, for it is perſonal. *Cro. Jac.* 131. *pl.* 10. *Noy* 135.

A **Tenants** in Common may join in an Avowry for Damage Feaſant, or in Treſpaſs. 5 *Mod.* 27. *Noy* 135. But not in an Avowry for Rent. 3 *Salk.* 207.

They may join in an Avowry for Damage Feaſant or Treſpaſs.

B **Where** the Tort is a Tort to both, they ought to join, but if the Tort be particular, as chaſing the Cattle of one, there he ſolely muſt have the Action. *Latch* 152, 153.

Where they muſt join, and where not.

C **Tenants** in Common may join in an Action of Debt for Rent, and declare for the whole Rent, or may ſever for Moieties; and if they declare ſeverally, then ſuppoſe the Rent be 20 *l. per Ann.* they muſt not declare ſeverall for 10 *l. per Ann.* a-piece, but for the Moiety of 20 *l. Crump.* and *Martin.* 9 *W.* 3. And upon Avowries the Judgment *de Retorno Habendo* ought to be ſeveral. 7 *W.* 3. *B. R.*

Where they join for the Whole, or ſever for the Moiety.

D **When** an Eſtate is limited by one and the ſame Conveyance, there one may have a Fee, and another an Eſtate for Life jointly; but when they are Tenants for Life firſt, and afterwards one acquires the Fee, or the Fee deſcends to one of them, there the Jointure is ſevered.

Where Tenant in Fee, and for Life, is by the ſame Conveyance, they are Jointenants.

But where Tenant for Life firſt, and Tenant in Fee after, then it is a Tenancy in Common.

E **Where** a Man makes an Eſtate to three, and the Heirs of one of them, there one of them hath a Fee, and yet the Jointure continues; for all is but one Eſtate created at one Time; and therefore the Fee cannot merge the Jointure, which takes Effect with the Creation of the Remainder in Fee.

To three, and the Heirs of one, is a joint Eſtate, but the Fee hath not merged the joint Eſtate.

F **But** when three are Jointenants for Life, and one purchaſes the Fee, or the Land deſcends to him, the Fee doth not merge the Eſtate for Life, becauſe the Eſtate for Life was *in eſſe* before, and may not be merged or ſurrendred. See Title **Merger.**

Three Jointenants for Life; one purchaſes, or the Fee deſcends to him; this doth not merge the Eſtate for Life.

G **A Deviſe** to two, and to the Heirs of their two Bodies lawfully begotten by equal Portions equally to be divided, makes a Tenancy in Common, according to the Intent of the Deviſor. 3 *Rep.* 36. *b.*

Deviſe to two, and the Heirs of their Bodies, equally to be divided, makes a Tenancy in Common.

H **One** Tenant in Common cannot bring an Action of Treſpaſs againſt another Tenant in Common. 3 *Leon. Caſe* 307. *Noy* 14. *contra.*

One Tenant in Common cannot bring Treſpaſs againſt the other.

I **One** Tenant in Common may diſtrein for Rent upon the other, when he comes in under the Leſſee, and the Diſtreſs may be taken upon any Part of the Land. *Cro. Jac.* 611. *pl.* 6.

Where one Jointenant may diſtrein for Rent upon the other, and where the Diſtreſs may be taken.

K **One** Tenant in Common may bring Waſte againſt his Partner, and what ſhall be done in it. See Title **Waſte.**

One Tenant in Common may bring Waſte againſt his Partner.

Partition.

Tenants in Common were not compellable at Common Law to make Partition before the Statute. 3 *Salk.* 205. A

What makes a Tenancy in Common. *Ibid.* B

Tender.

See { **Abatement.** **Award.** **Imparlance.** **Payment.**

Tender, what.

Tender is the offering of Money, or any other Thing. C

A Tender of Rent to ſave a Forfeiture muſt be of the whole Rent.

A Tender of Rent to ſave the Forfeiture of a Leaſe, ought to be a Tender of the whole Rent, due at the Time of the Tender, without any Deduction of Taxes or other Payments. (*Trin.* 23 *Car. B. R.*) Becauſe there was no Notice taken of ſuch Deductions to be made at the Time of the Covenant made; for the Leſſee covenants to pay the whole Rent. D

Money awarded is loſt by Tender and Refuſal.

A Sum awarded to be paid is intirely loſt by Tender and Refuſal. 3 *Lev.* 24. E

Covenant to make ſuch a Deed as ſhould ſatisfy the Plaintiff's Counſel, whether the Defendant ought to tender it.

Q. **If** Covenant to make ſuch a Deed as ſhould ſatisfy the Plaintiff's Counſel, the Defendant ought to tender it, to ſee if it will ſatisfy or not? 2 *Lev.* 95. F

Paratus ſolvere is an ill Plea in Debt for Rent.

Plea *paratus ſolvere* without *obtulit* is ill in Debt for Rent, and not cured by the *profert hic in Cur' parat' ſolvere.* 2 *Lev.* 209. 3 *Lev.* 103. G

Tender of Amends for Damage Feaſant before the Cattle are impounded is ſufficient, but not after.

Where a Diſtreſs is taken for Damage Feaſant, if there be a Tender of Amends made to the Owner of the Ground where the Treſpaſs was committed (for it will not be ſufficient to his Bailiff) before the Cattle are impounded, or a Writ ſued out for the Treſpaſs, it will be ſufficient, and may be well pleaded, but it comes too late after the Cattle are impounded, or Writ ſued out. H

A **In** an *Aſſumpſit* the Defendant after Imparlance pleads *ſemper paratus ad ſolvendum*, and upon a Demurrer the Plaintiff had Judgment, becauſe an Imparlance is *quaſi* an Eſtoppel; for when he conſidered what to plead, he was not ready.

Uncore priſt pleaded to an *Aſſumpſit* after Imparlance, is naught.

B **When** a Condition is for the Payment of Money, the Defendant, if he pleads a Tender, muſt ſay *uncore priſt*; but if it be to do a collateral Act, as to ſtand to an Award, *&c.* there he need not to ſay *uncore priſt*. See *Kitchin* 245.

To a Condition for Payment of Money, muſt be ſaid *uncore priſt*.

Not where it is to do a collateral Act.

C **A Sum** awarded was loſt by the Tender, it being a collateral Thing. 3 *Lev.* 277.

A Sum awarded loſt by the Tender.

D **Where** a ſingle Bill is made, and afterwards a Defeaſance is made, that if he pays a leſs Sum than, *&c.* There if he pleads the Defeaſance, and the Tender of the leſſer Sum, he need not ſay, *touts temps priſt*; for by the Tender he was diſcharged: But *aliter* of a Bond conditioned to pay a leſſer Sum. *Cro. Eliz.* 755. *pl.* 16. *Co. Litt.* 207. *a.* See *Moor*, Caſe 119.

Where in pleading of a Tender of Money, he muſt not ſay, *touts temps priſt*, and where he muſt.

E **If** a Man be bound in two hundred Quarters of Wheat to deliver an hundred, if the hundred be tendred at the Day, he ſhall not plead *uncore priſt*; for though it be Part of the Condition, yet they are *bona peritura*, and it is a Charge for the Obligor to keep them. *Co. Litt.* 207. *a.*

How where the Tender is of *bona peritura*.

F **On** a Covenant to pay Money where Damages only are to be recovered, Tender and Refuſal is a good Plea without *uncore priſt*. *Show. Rep.* 129, 130.

In Covenant where Damages only are to be recovered, Tender is good without *uncore priſt*.

G **Where** an Action of Debt is brought upon a Judgment, the Defendant may within the firſt four Days of the Term plead, That *ſemper paratus fuit & adhuc paratus exiſtit* to pay the Money; *& profert hic in Curia* the Money, and that is a good Plea, and the Plaintiff ſhall loſe his Coſts: But the Plaintiff *pro dampnis habend'* may reply, That *ante Exhibitionem Billæ* he demanded the Money, and that it was not paid; and if the Fact was ſo, it will be good. *Trin.* 9 *W. B. R. Note*, The Iſſue ſhall always be joined upon the Tender, and not upon the Refuſal, for it is impoſſible there ſhould be a Refuſal where there is no Tender. *Keilw.* 52. *a.* *Moor*, Caſe 120.

How to plead a Tender in Debt upon a Judgment.

How the Iſſue ſhall be joined.

H **Upon** a Bond the Defendant pleads a Tender, and brought the Money into Court, which the Plaintiff received, and Judgment to acquit him thereof. And the Plaintiff *pro dampnis habend'* alledges a Demand of the Money from the Defendant, and held no Plea; for if the Plaintiff would
I have Damages, he ought not to have received the Money, but left it in Court; for after Judgment *quod eat inde ſine die*, no Iſſue can be taken. *Cro. Jac.* 126. *pl.* 13.

Upon a Plea of Tender and Money received out of Court. *Et pro dampnis habend.* the Plaintiff comes too late, the Defendant being acquitted by Judgment.

Where upon Goods pawned, the Money tendred and refuſed is as good as Payment, and Trover lies.

A Where Goods are pawned, and the Money is tendred for them, it is as good as Payment, and the ſpecial Property of the Goods, which was in the Pawnee, is thereby reveſted in the Pawner, and upon a Demand and Denial, Trover lies. See *Cro. Jac.* 245. *pl.*

How to plead a Tender at the Day.

Where after Imparlance.

B Where a Man pleads a Tender at the Day, he need not plead *ſemper paratus*, becauſe he hath done what was required of him to do. *Note*, This may be pleaded after Imparlance. 4 *Jac.* 2. *B. R.* But 7 *W.* 3. it was ſaid *per Cur.* That when a Tender is pleaded at the Day in the Condition, the Defendant need not to plead *ſemper paratus*, but *uncore priſt*, and bring the Money into Court.

The bringing into Court the Principal, Intereſt and Charges, ſhall be a good Diſcharge to a Penal Bond.

4 & 5 Ann.

C By the Act made 4 & 5 *Annæ*, *For the Amendment of the Law*, it is enacted, That if at any Time, pending an Action upon a Penal Bond, the Defendant ſhall bring into the Court the Principal and Intereſt due upon ſuch Bond, with the Coſts of Suit in Law and Equity, the Money ſo brought in ſhall be in full Satisfaction and Diſcharge of the ſaid Bond, and the Court may give Judgment to diſcharge every Defendant accordingly.

When the Condition is ſaved, upon a Tender of Money.

D Altho' the laſt Time of Payment of Money by force of a Condition, at a convenient Time of the Day where the Money may be told before Sun-ſet, is a good Tender; yet if it be made to the Party at the Place at any Time of the Day, and he refuſes it, the Condition is ſaved. 5 *Rep.* 114. *a.*

No Damages to be recovered, where the Rent is tendred.

E Where Rent is tendred the Leſſor may after bring Debt, but he cannot recover any Damages; becauſe it was his own Fault that he would not receive it. *Litt. Rep.* 33, 34.

Tender of *Spaniſh* Money for lawful Money of *England*, and good.

F Where a Condition was to pay 100 *l.* of lawful Money of *England*, the Tender of *Spaniſh* Money was good, it being made current by Proclamation in the Time of *Philip* and *Mary*. 5 *Rep.* 114. *b.*

A Tender of more than due is good.

G If a Tender is made of more than is due, it is good, and the other ought to take out what belongs to him. 5 *Rep.* 115. *a.*

Tender in Bags, is good.

Who is to tell it.

Bad Money not to be changed.

H A Tender in Bags, without ſhewing or telling of it, is good, if it can be proved that there was the Sum to be tendred; and if the telling of it belongs to the Mortgagee, he ought to put it out of the Bags; but if he takes it without counting, if there be any bad Money, the Mortgagor is not bound to change it. 5 *Rep.* 115.

So alſo where too great a Sum to be told in a Day is to be tendred.

I If a Man be bound to pay 40000 *l.* at one Time, and he tender it in Bags, it is ſufficient, becauſe ſuch a Sum cannot be counted in one Day. 115. *a.*

A **Upon** an *Indebitatus Aſſumpſit*, and a Special Requeſt, the Defendant pleads a Tender before the Requeſt, and brings the Money into Court: The Court thought that the Defendant ought to have pleaded thus, *viz. Quoad aliqua ulteriora dampna Miſa & Cuſtag.* and when it is in Debt, then *quod dampna occaſione Detentionis Debiti*, &c. *Mich.* 9 *W.* 3.

Upon an *Aſſumpſit*, and ſpecial Requeſt, how to plead a Tender before the Requeſt.

B **How** a Tender of Rent to be pleaded to Debt brought by a Grantee of the Rent againſt Aſſignee of the Leſſee. *Lutw.* 367, 368. 593.

How a Tender of Rent ought to be pleaded in Debt by Grantee, againſt the Aſſignee of a Leſſee.

C *Touts temps priſt*, without a Tender in Court, is naught. *Lutw.* 283.

Touts temps Priſt, without a Tender, is naught.

D **Tender** of Amends pleaded after a new Aſſignment, and held to be no Departure. *Lutw.* 1261.

Tender of Amends after a new Aſſignment, is no Departure.

E **In** an *Aſſumpſit* the Defendant pleads a Tender of two Guineas of the Value of 45 *s.* *abſque hoc*, that he deſerved more; and upon a ſpecial Demurrer the Traverſe was adjudged to be naught, and a Repleader awarded omitting the Traverſe, and the Plea of Tender to be of the 45 *s.* and Iſſue to be taken of the Sufficiency thereof. 3 *Lev.* 440.

In caſe upon a *Quantum meruit* the Defendant pleads a Tender of 45 *s.* and traverſes that he deſerved more, it is naught.

F **A Covenant** to convey according to Draughts agreed upon; there needs no Tender of Wax, becauſe he had taken this upon himſelf. 1 *Lev.* 44.

How to be upon Conveyance according to Draughts.

G **When** the Tender of a Conveyance is neceſſary, and when not. *Ibid.*

When the Tender of a Conveyance is neceſſary, and when not.

H **The** Defendant may tender an Amends in an involuntary Treſpaſs, but not in a Treſpaſs by Miſtake. 3 *Lev.* 37.

Tender may be in an involuntary Treſpaſs, but not in a Treſpaſs by Miſtake.

I **A Tender** upon the Land before the Diſtreſs for Rent, or Damage Feaſant, makes the Diſtreſs tortious: A Tender after the Diſtreſs, and before the impounding, makes the Detainer, and not the Taking, tortious.

Tender before Diſtreſs and after.

Before and after impounding.

K **A Tender** after the impounding makes neither the one nor the other tortious, for it comes too late. 8 *Rep.* 147. *a.* See 2 *Inſt.* 107.

L **In** a *Clauſum fregit* the Defendant pleads Tender of Amends according to the Statute of 21 *Jac.* *c.* The Plaintiff replies, That before ſuch Tender he ſued out a *Latitat*, *Teſte* ſuch a Day, and procured the Defendant to be arreſted, intending to declare in Treſpaſs: And reſolved that this Tender came too late; for the Tender ought to be immediately after the Treſpaſs and before any Suit commenced.

Tender comes too late after a Writ ſued out but it ought to be immediately after the Treſpaſs.

Time and Place.

Where the Time and Place are certain it muſt be ſet forth when he came and made the Tender, and how long he ſtayed. 3 *Salk.* 342. A

Where Tender on the Day a good Plea.

In Debt on a Bond to pay a certain Sum on a certain Day, there a Tender on the Day, and *ſemper paratus* is a good Plea, but not in *Aſſumpſit.* 3 *Salk.* 343. *Comberb.* 441. B

Where not.

'Tis not a good Plea where the Time and Place of Payment are certain without alledging *obtulit ſe.* 3 *Salk.* 342. C

Tender and Refuſal.

Tender and Refuſal how to be pleaded. *Carthew* 133. and where a good Plea, and where not. *Comberb.* 334, 443, 444. D

Semper paratus & profert hic in Curia is good without a Tender. *Carthew* 413. E

Releaſe.

If one is obliged to releaſe on Payment of Money, he is bound to releaſe on Tender and Refuſal as if actually paid. *Salk.* 75. F

Refuſal.

When both Parties meet, and the Time and Place, he that pleads Tender muſt alſo plead Refuſal. *Salk.* 623, 687. G

How to plead, *&c.*

And if the Defendant be abſent, the Plaintiff muſt ſhew that, and that he was there at the Time and tendered. *Ibid.* H

The like.

And the Pleader muſt ſhew when he came, and how long he ſtayed, *&c.* *Salk.* 624. I

He muſt ſtay till Sun ſet, unleſs ſpecial Circumſtances ſhewn ſhall vary it. *Ibid.* K

Imparlance.

To a general *Aſſumpſit*, Tender, *&c.* muſt be pleaded with a *Tout temps priſt*, which can't be after Imparlance. *Salk.* 622. L

Aſſumpſit.

How *tout temps priſt* is pleadable in *indebitatus Aſſumpſit, &c.* *Salk.* 623. M

Concluſion of Plea.

In pleading Tender in Debt, the Defendant prays Judgment *de dampnis*, but in Caſe *de ulterioribus dampnis.* *Ibid.* N

Owner of a Stray.

The Owner of a Stray may ſeiſe it tendering Satisfaction, and in pleading it need not ſhew the Sum tendered. *Salk.* 686. O

Iſſue on the Acceptance.

In *Aſſumpſit* Satisfaction was pleaded, and an Iſſue taken upon the Acceptance, held good. *Salk.* 627. P

Plea.

Tender, how to be made or pleaded. *Mod. Caſes in Law and Equity* 69, 70, 71, 218, 219, 292. Q

Tender and Refuſal.

Where a Time and Place is agreed on by the Parties, and they both meet, he who pleads a Tender muſt alſo ſhew that the other refuſed, *&c.* but if one of them is not there, that muſt be ſet forth by the other, and that he was there *& obtulit.* *Ibid.* 70, 71, 219, 292. R

A In Debt for Rent a Tender after Imparlance is a good Plea. *Comberb.* 50.

Debt for Rent.

B And the Tender is not material in any Thing but where there is a Penalty. *Ibid.* 334.

Where an actual Tender neceſſary.

Tenement.

C The Word Tenement includes not only all corporate Inheritances, but alſo all Inheritances iſſuing out of any of them, or concerning or annexed to the ſame, tho' they lie in Grant, as Rents, Eſtovers, &c. Co. Litt. 19. b. 20. a.

Tenement, what.

D A Tenement may be ſaid to be any Houſe, Land, Rent, or other ſuch like Thing which is any way held or poſſeſſed; and it is a Word of very large and ambiguous Meaning, and therefore not fit to be uſed to denominate or expreſs any Thing which requires a particular Deſcription. 21 *Car. B. R.*

What ſhall be ſaid a Tenement.

Tenure.

See { Avowry.
Seiſin.

E Tenure ſignifies the Eſtate in the Land; therefore Tenant in Fee-ſimple is he which hath Lands to hold to him and his Heirs. Co. Litt. 1. a. It alſo ſignifies the Tenure or Service by which the Land is holden. Ibid.

Tenure, what.

How all Lands in *England* are holden.

A **All** Lands and Tenements in *England* are holden either mediately or immediately of the King; and therefore he is *ſummus Dominus ſupra omnes.* 2 *Inſt.* 531.

In Capite turned into Socage by the Statute of 12 **Car. 2. cap.** 23.

B **Tenure** *in capite* are now all turned into Socage-Tenures by Act of Parliament made 12 *Car.* 2. *c.* 23.

The Words *in capite* void in Grant.

C **Lands** which are granted by the King to hold of him of his Manor of *Eaſt Greenwich* in *Kent*, *in capite*, is a Tenure in Socage, and the Words *in capite* in the Grant are void. (*Trin.* 23 *Car. B. R.*) For theſe Words *in capite* are repugnant to the Tenure created by the Grant; for all Lands that hold of that Manor are held in Socage.

What ſhall be good Evidence for the Lord of a Tenure, and what of holding by Quit-Rent.

D **A Man** ſerving upon the Homage, and joining in Preſentments, is a good Evidence of his Tenure of the Lord, and he ſhall do Fealty, and the Lord ſhall have the Land by Eſcheat, if he die without Heir: But this is no Conſequence that he holds by any Quit-Rent, and nothing can be Evidence of that but ſome written Evidence mentioning of it, or Proof of actual Payment, or plain Confeſſion, or Acknowledgment of it.

Where the Tenure, and not the Seiſin, is traverſable.

E **In** what Caſes the Tenure is traverſable, and not the Seiſin, and where the Seiſin and not the Tenure. *Keilw.* 31. *b.* See 6 *Rep.* 1, 2. *Plow. Com.* 95, 96.

Term foꝛ Years.

See {Grants. Leaſes.

A **A Leaſe foꝛ a Term of Years is a Chattel Real, and all Goods which are removeable are Chattels Perſonal.**

Term for Years, what.

B *J. S.* reciting a Leaſe of a Cottage, Barn and Lands, for the Term of 1000 Years, veſted in him after 32 Years of the 1000 Years were expired; grants all the ſaid Cottage, Barn and Lands, and all and ſingular other the Premiſſes therein before recited or mentioned, together with the ſaid recited Leaſe; and all Writings and Evidences concerning the Premiſſes, *habendum* to the Grantee from and immediately after the Death of the Grantor and his Wife, for the Reſidue of the ſaid Term of 1000 Years then to come and unexpired: The Queſtion was, Whether this be a good Grant, the Grantor having reſerved to himſelf an Eſtate for Life, which by Conſtruction of Law is greater than any Eſtate for Years? And reſolved, That the Term ſhall paſs to the Grantee by Virtue of the Premiſſes, and the *Habendum* ſhould be rejected. *Skin.* 528, 545.

Where the Term paſſes to the Grantee.

C **Whether** a Leaſe for Years by Grantee for Years, to commence after his Death, be good. *Ibid.* 535, 536, 537.

Of the Commencement of a Term.

D **The** Difference which the Law makes between long and ſhort Terms of Years. *Ibid.* 538, 539.

Long and ſhort Terms.

Term

Term and Vacation.

The four Terms.

There are four Terms in the Year, viz. Hillary Term, which begins the 23d of January; Eaſter Term, the next Wedneſday after 15 Days of Eaſter; Trinity Term, the Friday after Trinity Sunday; and Michaelmas Term, on the 23d of October: During which Terms the Courts in Weſtminſter-hall do ſit and diſpatch their Buſineſs, and give Judgments, &c. A

Which are the iſſuable Terms, and why ſo called.

The iſſuable Terms are *Hillary* Term and *Trinity* Term only, the other two Terms are not ſo called; and the iſſuable Terms are ſo called, becauſe in them are the Iſſues joined and made up, which are to be tried at the *Lent* Aſſizes, and the Summer Aſſizes, which do immediately and reſpectively follow them. *Hill.* 22 *Car.* *B. R.* B

The four Days in Term.

The four Days in Term are the Day of
1. *Eſſoin.*
2. *Exception.*
3. *Appearance.*
4. *Return.*
Hill. 22 *Car.* *B. R.* C

Term at *Oxford* by reaſon of the Plague adjourned to *Weſtminſter*.

Term at *Oxford propter peſtem* adjourn'd to *Weſtminſter*. Bill of *Middleſex*, and how teſted and executed. 1 *Lev.* 176. D

The Court takes no Notice of the Day of the Return of the Writ in moveable Terms.

The Court does not take Notice of the Day of the Return of the Writ, as to the Day of the Month, in moveable Terms. *Id.* 196. E

To what Day the Judgment in *B. R.* refers.

In *B. R.* the Judgment does not refer to the firſt Day of the Term, but to the filing of the Bill. 2 *Lev.* 180. F

The whole Term but one Day.

All the Term in Conſtruction of Law is accounted but one Day, and therefore a Plea that is put in the laſt Day of a Term, is a Plea of the firſt Day of the Term, *& ſic econtra* as to ſome Purpoſes. *Trin.* 23 *Car. B. R. Mich.* 1649. *B. S.* G

It begins on the Eſſoin-day.

The Term is ſaid to begin upon the Eſſoin-day, upon which Day one Judge in each Court of Law at *Weſtminſter* Hall ſits, and Eſſoins are then entred, H tred, and the third Day afterwards (except it is *Trinity* Term, or elſe a Sunday intervening before *Michaelmas* or *Hillary* Term) is the firſt Day of the Term, at which Time the Judges in all the Courts of Juſtice do ſit to do the Buſineſs of the Term.

A **The** ſame Day of the Week that *Michaelmas* Term doth end, the ſame Day *Hillary* Term doth always begin.

Hillary Term always begins the ſame Day of the Week that *Michaelmas* Term ends.

B *Trinity* Term abridg'd and four Returns taken away, and now there ſhall be only four Returns remaining.

Trinity Term abridg'd. 32 H. 8. cap. 21.

C *Michaelmas* Term was formerly two Returns longer than it is now; but the ſame were taken away, and the Term abbreviated by 16 *Car.* 1. *cap.* 6.

Michaelmas Term abbreviated. 16 Car. 1. cap. 6.

D **A Bill** can't be filed againſt a priviledged Perſon in the Vacation. *Salk.* 544.

Of filing a Bill.

E **And** the Vacation begins the laſt Day of the Term as ſoon as the Court riſes. *Ibid.*

Vacation.

F **No** Matters of Law are to be heard the laſt Day of a Term. *Salk.* 624.

Laſt Day of the Term.

G **But** a Trial at Bar may be the laſt Day where the King is Party. *Ibid.* 625.

Trial at Bar.

H **Sundays** and Holidays are computed for Acts done out of Court. *Ibid.* 624.

Sundays, *&c.*

I **But** Sundays are not included in the four Days to move in Arreſt of Judgment. *Ibid.* 225.

Arreſt of Judgment.

K **One** may be taken on an Eſcape Warrant on a Sunday. *Ibid.* 626.

Eſcape.

L **And** a Citation may be ſerved by fixing it on the Church Door on a Sunday. *Ibid.* 625.

Citation.

M *Tres Trin* is on a Sunday, and Writ of Enquiry then returnable, if executed on the *Monday* is Er-
N ror. *Ibid.* 626.

Writ of Enquiry.

The Court takes judicial Notice of the Compu-
O tation of Time the Calendar, *&c.* *Ibid.* 626, 627.

Computation of Time.

An Insurance of *A*'s Life for a Year, *A.* died on
P the laſt Day, the Inſurer is liable. *Ibid.* 625.

Inſurance.

A Condition to do an Act at the End of ſeven Years on Requeſt, a Requeſt is to be the laſt Day. *Ibid.* 585. *Vide* 624.

Requeſt.

Tertenants.

See { **Error.** **Heir.** **Judgment.** **Sci. Fa.**

Tertenants, what.

Tertenants are the Land-holders. A

How to plead in a *Sci. Fa.* againſt Tertenants upon a Settlement to make Leaſes.

Whether a ſpecial Non-tenure muſt be pleaded in Bar or Abatement.

To a *Sci. Fa.* againſt Tertenants, a Settlement is pleaded, wherein there is Power to make Leaſes, and the Tenant pleads in Bar a Leaſe for Years purſuant thereunto; the Plaintiff demurs, and the Queſtion was, Whether a ſpecial Non-tenure cannot be pleaded in Bar, but muſt be pleaded in Abatement only? See in *Saunders*, and in 2 *Ventr.* 104. B

They cannot plead in Abatement of a Writ of Error, but only in Bar.

Tertenants cannot plead in Abatement of a Writ of Error, but only in Bar; for the *Sci. Fa.* againſt him is not *ad audiendum Errores*, but *ad audiendum Proceſſus & Recordum.* 1 *Lev.* 72. C

It is a good Plea to ſay that the Recognizor had nothing in the Land, &c.

The Tertenant appeared and pleaded, That the Recognizor had nothing in the Lands at the Time of the Recognizance, or ever after, and Iſſue thereupon, and tried. *Cro. Car.* 295. *pl.* 5. D

Two *Sci. Fa.* in two Counties; the Defendant in one County ſhall not take any Advantage of any Error in that in the other County.

Where there are *Sci. Fa.* in two Counties, and ſeveral Pleas, and the Defendant in one County dies after Verdict found for him and before Judgment, the other Defendant in the other County cannot in a Writ of Error upon the Judgment againſt him aſſign this for Error. *Cro. Car.* 517. *pl.* 19, 518. E

Where the Heir is charged only as Tertenant, and not as Heir, and why.

In the Caſe of a Recognizance, Statute or Judgment, the Heir is charged as Tertenant, and not as Heir; becauſe by the Recognizance, Judgment or Statute, the Heir is not bound, but the Anceſtor *concedit*, that the Money *de Terris*, &c. *levetur.* 3 *Rep.* 12. *b.* See *Cro. Car.* 295. *pl.* 5. F

A **In** a *Sci. Fa.* upon a Judgment in Debt againſt Tertenants, the Sheriff returned a *Sci. Fe.* to *J. S.* Tertenant of a Meſſuage, *&c.* who comes and pleads that he is not Tertenant againſt the Return of the Sheriff; this is no Plea, and the Plaintiff may take Execution at his Peril. *Cro. Eliz.* 872. *pl.* 9.

No Plea to ſay that he is not Tertenant.

B **The** Heir cannot ſay that he is Son and Heir, and plead in Abatement of the *Sci. Fa.* becauſe the *Sci. Fa.* was not ſued againſt him as Heir, pretending that a Writ ſhould iſſue out firſt againſt him as Heir, before the Writ ſhould iſſue out againſt the Tertenants. *Cro. Eliz.* 896. *pl.* 19.

The Heir cannot ſay that the *Sci. Fa.* ought to iſſue out againſt him before it goes out to the Tertenants.

C **In** a *Sci. Fa.* againſt Tertenants, and *A. B.* is returned a Tertenant, he comes and ſays that *C. D.* is Tertenant of twenty Acres in ſuch a Vill of the Lands liable to the Judgment, and demands Judgment, if he ſhall be put to anſwer till *C. D.* is warned; and held a good Plea: For in this Caſe every Tertenant ſhall be contributary with him, *Cro. Jac.* 506. *pl.* 19. 507.

One Tertenant may plead that there are other Tertenants not ſummoned, and good.

Teſt.

D **B**Y the Act (commonly called the Teſt Act) made 25 *Car.* 2. *cap.* 2. it is enacted, That he who neglects to take the Oaths and Teſt, *&c.* and after ſuch Neglect, ſhall execute any Office within the Words of that Act, being legally convicted, upon Information, Preſentment, or Indictment, *&c.* in any of the Courts at *Weſtminſter*, or at the Aſſizes, ſhall forfeit 500 *l.* to be recovered by him who will ſue for the ſame in any Action of Debt, Bill, Plaint, or Information. *Note*, The Conviction ought to precede the Penalty for the 500 *l.* See *Lutw.* 162, 163. where are Directions how to proceed upon this Act.

The Teſt Act, and Proceedings upon it. 25 Car. 2. cap. 2.

Time.

Time.

See { **Election.** **Month.** **Request.**

The Law allows a convenient Time to do a Thing in.

Where the Law doth not imply a certain Time for the doing of a Thing, nor is there any certain Time agreed upon by the Parties for doing it, then the Law doth allow a convenient Time to the Party for the doing of it, (*Mich.* 22 *Car.* 1. *B. R.*) That is to ſay, as much as ſhall be adjudged reaſonable for the doing of it, without Prejudice to him who is to do it. A

A Man may have during his Life to do a Thing if not haſtened by Requeſt.

In ſome Caſes one hath Time during his Life for the doing of a Thing, if he be not haſtened to do it by Requeſt of the Party for whom it is to be done; but if in ſuch Caſe he be haſtened by Requeſt, then he is bound to do it in a convenient Time after ſuch Requeſt made. *Hill.* 22 *Car.* 1. *B. R.* B

Lunar Months.

Twelve Months ſhall be taken for Lunar Months. *Comber.* 439. C

Arreſt of Judgment.

Where the Time is not material; yet if it be laid after the Action brought, the Judgment ſhall be arreſted; *ſecus* of a Time impoſſible, as 30 *February.* *Ibid.* 442, 443. D

Time impoſſible.

An impoſſible Time is no Time at all. 3 *Salk.* 8. E

Pleading.

Where the Time is material in Pleading, and not tranſitory. *Ibid.* 42. F

Where the Day is not material in Pleading. *Ibid.* 123. G

Where 'tis made Part of the Iſſue 'tis ill. *Ibid.* 208, 209. H

Where a Thing is to be done at ſuch a Time, and the Plaintiff ſets forth that it was done on ſuch a Day, it is good. *Ibid.* 346. I

Kalendar and Lunar Months.

Where Time ſhall be computed according to the Kalendar, and not by 28 Days to the Month. *Ibid.* 347. K

A Where the Day on which a Grant was made is not traverſable. 3 *Salk.* 355, 356.

Traverſe.

B Where the Time muſt be traverſed both before and after the Treſpaſs. *Ibid.* 357.

The like.

C Where the Traverſe doth not anſwer the Time. *Ibid.*

The like.

D Upon the Statute of 1 *W. & M.* which appoints all Biſhops, *&c.* to take the Oaths: The Queſtion was, Whether the ſix Months mentioned in the Statute are to be accounted Kalendar Months or Lunar Months, and ſaid that this being upon the Conſtruction of an Act of Parliament, it ought to be conſtrued according to our Law, that the ſix Months ſhall be accounted Lunar Months. *Skinner* 313.

Kalendar and Lunar Months.

Tipſtaff.

E A Tipſtaff is an Officer who is appointed by the Marſhal of the King's Bench to attend the Judges at their Chambers, and in Court; and is called a Tipſtaff from a ſhort Stick he always carries with him which is tipt with Silver; and he takes Perſons into Cuſtody by the Rules of Court, or a Judge's Warrant.

A Tipſtaff, what.

F The Court will not grant an Attachment againſt an Officer of the Court for a Miſdemeanor committed by him as an Officer of the Court; but they will make a Rule for one of the Tipſtaffs to bring him into the Court. 21 *Car. B. R.* And they are in this Regard in the Nature of Meſſengers or Purſuivants of the Court.

A Tipſtaff is in the Nature of a Meſſenger of the Court.

G If a Sheriff do commit a Miſdemeanour in Relation to the Court during his Office, and afterwards a new Sheriff is elected, whereby the old Sheriff is out of his Office; the Court may grant a Tipſtaff to the Party injured to bring him in to anſwer the Miſdemeanor, although he is out of his Office; but he being out of his Office, the Court cannot fine or amerce him for his Miſdemeanor: *Paſch.* 24 *Car. B. R.* For he is only fineable as an Officer of the Court.

After Election of a new Sheriff, the Court may order a Tipſtaff to bring in the old for a Miſdemeanor during his Office.

Is granted for one in *London* or *Weſtminſter*, but an Attachment uſually into the Country.

A Tipſtaff is to be granted for one that is in *London* or *Weſtminſter*; but if he be in the Country, uſually an Attachment is to be granted, directed to the Sheriff of the County where the Party lives, and not a Tipſtaff; but the Court (if they ſee Cauſe) do upon extraordinary Occaſions ſend Tipſtaffs into the Country: *Hill.* 22 *Car. B. R.* and 23 *Car.* and *Paſch.* 1650. For the Tipſtaffs are Officers to attend the Court, and are not therefore to be ſent out of Town. A

Granted to bring in an Attorney, for refuſing to file Bail according to his Promiſe.

A Tipſtaff was granted to bring in an Attorney of the Common Pleas, for refuſing to file Bail, according to his Promiſe made to an Attorney of this Court. *Nota.* B

Tithes.

See
Pariſh.
Prohibition.
Unity of Poſſeſſion.

Tithes, what.

Tithes are to be paid of ſuch Things as yield a yearly Increaſe by the Act of God; and the Tithe is the tenth Part. C

When Tithes firſt paid to the Pariſh-Prieſt.

Before the Council of *Lateran* (which firſt made Pariſhes) every Perſon was obliged to pay his Tithes to ſome Prieſt, but he was at his own Liberty to pay them to what Prieſt he pleaſed; but that Council decreed, that every Perſon ſhould pay them to his own Pariſh-Prieſt, which is the Law at this Day. D

Muſt be granted by Writing.

Tithes cannot be granted or leaſed but by Writing; but a Rectory conſiſting of Glebe, *&c.* may be leaſed by Parol. E

Only Spiritual Perſons can take Tithes by the Common Law.

No Perſon hath by the Common Law, Power to take Tithes, but ſpiritual and mixt Perſons; but a Layman who is not capable of Tithes in Pernancy, is capable of a Diſcharge of Tithes in his own Land, by Grant from the Parſon, Patron and Ordinary; but he cannot preſcribe to be diſcharged at the Common Law, though he may preſcribe to pay a *Modus decimandi* in Lieu of Tithes. F

The Rector is the Proprietor of the Tithes.

A **The** Rector of a Church ſhall be accounted the Proprietor of the Tithes of that Pariſh, to which the Church doth belong, if the contrary be not ſhewed: *Trin.* 24 *Car. B. R.* Becauſe moſt Rectors are ſo, though ſome be not.

Tithes of extra-parochial Lands belong to the King.

B **Tithes** of Lands which do not lie in any Pariſh, do properly belong to the King: *Mich.* 24 *Car. B. R.* For that which no Subject can juſtly claim, is the King's as Lord Paramount.

Foreſt-Lands free from Tithes, 'till they are deforeſted.

C **Lands** which lie in a Foreſt, and are in the Hands of the King, are free from paying of Tithes, although they do lie within ſome Pariſh; but if they be deforeſted, and come into the Hands of another, they ought to pay Tithes; for the not paying of Tithes for them, whilſt they were in the King's Hands, and were Foreſt-Lands, is but an Immunity for the Time, and not an abſolute Diſcharge. *Mich.* 24 *Car. B. R.*

How Tithes are due

D **Tithes** are not due to be paid *Jure Divino*, but *per Legem Terræ*: So held by the Court, agreeing with *J. Selden*'s *Hiſtory of Tithes*, *Mich.* 1649. *B. S.*

Improved Lands ſhall pay only the accuſtomed Tithes.

E **If** Lands paid no Tithes before the Statute of *Ed.* 6. or but very inconſiderable Tithes; and afterwards the Lands for which the Tithes were paid, are improved by the Owner, he ſhall only pay the accuſtomed Tithes paid for them before the Improvement of them, *to wit*, ſuch Tithes as were paid for them, for the ſeven laſt Years immediatly preceding the Improvement; but if no Tithes at all were paid for them before the Improvement, no Tithes ſhall be paid for them after the Improvement: 1650. *B. S.* For the Improvement of Land not titheable by Law, cannot make it titheable; for this were to alter the Law.

Debt upon the Statute of *Tithes*. The Plaintiff ſets forth his Title to a Portion of Tithes.

2 E. 6. cap. 13.

Firmarius vel Proprietarius, need not ſhew what the Quantity of the Grain was.

F **Debt** upon the Statute 2 *E.* 6. *cap.* 13. for not ſetting forth of Tithes, and ſays, That he was ſeized in Fee of a Portion of Tithes of Corn growing, *&c.* where the Defendant is Occupier, and that he ſowed forty Acres with Wheat, Rye, *&c.* and reaped and carried it away without ſetting forth the Tithes: And after Verdict, moved, that he being a lay Perſon intitles himſelf to a Portion of Tithes, and ſays not how. *Curia.* This Action is grounded upon a Tort for not ſetting forth of Tithes, and he needs not make any Title; ſo *Firmarius vel Proprietarius*, without ſhewing any Title, is good; alſo he doth not ſhew what the Quantity of every Grain is; *ſed non allocatur.* *Cro. Jac.* 437. *pl.* 8, 438.

Where no Tithes ſhall be paid.

G **Where** a Pariſhioner doth any Thing which he is not compellable by Law to do, which cometh to the Benefit of the Parſon, if he demands Tithes of the Thing in Lieu whereof this is done, a Prohibition lies. *March* 65. *pl.* 100.

Not for Wood expended in the Houſe of a Pariſhioner.

Tithes ſhall not be paid by a Pariſhioner for Fuel expended in his Houſe. *Cro. Eliz.* 609. *pl.* 15. A

Of what Trees Tithes ſhall be paid.

Tithes ſhall be paid of Birch, and of ſuch Wood which ſerve for Fuel, and not for Building. *Cro. Eliz.* 1. *Cro. Jac.* 199. *pl.* 29. B

Of what not.

But no Tithes ſhall be paid for Trees which are or may be Timber; as Oaks, Elms, *&c.* though under the Age of twenty Years: Nor Tithe ſhall not be paid of new Germins which grew from them. *Cro. Eliz.* 55. C

Tithes for one Thing cannot be a Recompence for Tithes of another.

Tithes paid for one Thing cannot be intended to be a Recompence for Tithes of another Thing, where Tithes are payable for both in Kind. *Cro. Eliz.* 446. *pl.* 10, 786. *pl.* 26. D

A Preſcription to be diſcharged of one Tithe by Payment of another.

A Preſcription to be diſcharged of one Tithe by the Payment of another, is naught. *Cro. Eliz.* 446. *pl.* 10, 768. *pl.* 26. E

What Agreement to pay Tithes is void.

A verbal Agreement to pay Money in Diſcharge of Tithes, is void. *Hob.* 176. F

Where a *Modus* ſhall be tried in the Spiritual Court, and where at the Common Law.

Upon a Suit in the Spiritual Court upon a *Modus*, if it be allowed, they ſhall proceed there; but if the Cuſtom be denied, it muſt be tried at the Common Law: And as the Fact is found, either the Prohibition to ſtand, or elſe a Conſultation to be awarded. *Hob.* 247. G

Who are capable of Tithes, and the ſeveral Ways of Diſcharge.

Who are the Perſons or Bodies capable of Tithes, and the ſeveral Ways of Diſcharge. *Hob.* 296, 297, 308, 309. H

How temporal Perſons may obtain, or be diſcharged from Tithes.

By what Ways temporal Perſons may obtain Tithes, or be diſcharged of Tithes. *Hob.* 297. I

Preſcription may be for a *Modus*, but cannot be in a *Non decimando*.

A Man may preſcribe in a *Modus decimandi*, but not in a *Non decimando*: This is in Favour of the Church, leſt Laymen ſhould ſpoil it. *Ibid.* K

Where there may be a Preſcription *in non decimando*, and where not.

But an Hundred may preſcribe in a *Non decimando*; for it is the Cuſtom of the Country: But a particular Town or Pariſh cannot. *March* 25. L

Except a Spiritual Perſon.

But a Spiritual Man may preſcribe in a *Non decimando*. *Cro. Eliz.* 206. *pl.* 42. M

The King cannot preſcribe for Tithes as Parcel of a Manor.

The King cannot preſcribe for Tithes as Parcel of a Manor, but he may preſcribe for *Decimam partem granorum*. *Cro. Eliz.* 293. *pl.* 7, 599. *pl.* 5. N

Where Unity of Poſſeſſion is a Diſcharge of the Payment of Tithes.

What Unity of Poſſeſſion at the Diſſolution of Monaſteries, is a Diſcharge of the Payment of Tithes. *Hob.* 297, 298, 299. O

For what Trees Tithes ſhall be paid.

Tithes ſhall not be paid for Timber-Trees for Building, nor for their Branches: But Trees for Fuel, or other little Uſes; as Horn-Beams, *&c.* ſhall pay Tithes. 2 *Plow.* 470. *a.* P

A No Tithes ſhall be paid for Timber-Trees, which were *Mortuæ, aridæ & putridæ*; becauſe being above twenty Years Growth, they were once diſcharged, and ſo ſhall ever remain. *Cro. Eliz.* 477. *pl.* 6.

No Tithes ſhall be paid for decayed old Timber-Trees.

B A Prohibition ſhall be granted where a Suit ſhall be commenced in the Spiritual Court for the Tithes of Wood called *Sylva Cadua*.

No Tithes of *Sylva Cadua*,

45 E. 3. cap. 3.

C The Common Law doth not oblige a Man to give Notice when he ſets out his Tithes; but the Civil Law does. *Noy* 19.

By the Civil Law there muſt be Notice given of Tithing, but not by the Common Law.

D The Statute of 2 *Ed.* 6. *cap.* 13. intended, That no Lands ſhould be diſcharged from the Payment of Tithes for ſeven Years; but ſuch Lands only which were meerly barren, and made good by Folding, or other induſtrious Means. *Cro. Eliz.* 475. *pl.* 3.

What Lands ſhall be diſcharged from Tithes for ſeven Years, by the Statute of

2 Ed. 6. cap. 13.

E Tithes of the firſt Mowing made into Hay, are a good Bar for the Tithes of After-mowing. *Hob.* 250. *Cro. Jac.* 42. *pl.* 7. *Cro. Car.* 403. *pl.* 2.

No Tithes for After-mowing.

F Not for Cattle brought up for the Pail and Plow. *Cro. Eliz.* 702. *pl.* 21.

No Cattle for the Pail and Plow.

G But if the Cattle depaſtured were not for Plowing the Land in the ſame Pariſh where they are fed, he ſhall pay Tithes, though they plow in another Pariſh: So if he have more Cattle than are imployed in Plowing. 5 *Mod.* 97.

Unleſs they are imployed in another Pariſh to work.

H Where there is no *Modus*, they muſt be paid after the Rate of two Shillings in the Pound, according to the Value of the Land. *Hard. Rep.* 184.

How the Tithes for them are to be paid.

I Not for a Nag to labour, and not for Profit. *Poph.* 126. See *Thornhill*'s Caſe in *Hetl. Rep.*

Nor for a riding Nag.

K Tithes ſhall not be paid for Pigeons, unleſs by ſpecial Cuſtom. 2 *Mod.* 77.

Shall not be paid for Pigeons, except by Cuſtom.

L No Tithes ſhall be paid for the After-mowing of Clover Graſs, no more than for the After-mowing of ordinary Graſs. *Lutw.* 1704. *Hob.* 250.

Not paid for the After-mowing of Clover.

M Not for green Tares given to Horſes before they were ripe. See the Caſe for the Cuſtom alledged there, and the Reaſon of it. 2 *Leon. Caſe* 30.

Nor for green Tares eaten by Horſes.

N It is a good Preſcription for a Lord of a Manor, that he hath paid annually ſuch a Sum, in Satiſfaction of all Tithes within the Manor: And alſo, That he, and all thoſe, *&c.* have uſed to have, in reſpect of the ſaid Sum, the tenth Part of all the Corn growing within the ſaid Manor; this was held to be a good Preſcription. *Cro. Eliz.* 763. *pl.* 1. *Cro. Eliz.* 785.

A Preſcription for the Lord to have the tenth Part of all the Corn growing within the Manor, paying ſo much yearly.

Where a Prohibition lies upon a Suit for Tithe of Glebe by a Sequeſtrator.

A Prohibition will lie upon a Suit for Tithe of Glebe, by a Sequeſtrator or Curator. *Lutw.* 1704. *Hob.* 250. A

Tithes in *D.* and *S.* and ſays not how much in either Place, and yet good.

Debt for Tithes in *D.* and *S.* and ſays not how much in *D.* nor how much in *S.* and held good: Becauſe this Action is in the Nature of a Treſpaſs founded upon a Tort. 2 *Lev.* 1. B

A Contract to retain Tithes for a Parſon's Life, is good.

A Contract in Writing to retain Tithes for the Parſon's Life, is good. C

Parol Leaſe of Tithes for one Year, is void.

A Parol Leaſe of Tithes is void if it be for above one Year. 2 *Leon. Caſe* 98. *Cro. Jac.* 137. See *Latch* 176, 177. D

An Aſſize lies for Tithes. 32 **H.** 8. cap. 7. ſect. 7.

An Aſſize for Tithes is given by the Statute of 32. *H.* 8. *cap.* 7. *Cro. Eliz.* 559. *pl.* 16. E

A Diſcharge for Tithes for Years is good, without Deed, but not for Life.

A Contract to be diſcharged of Tithes for Years, is good; but a Diſcharge for Life cannot be good, without Deed. 3 *Leon. Caſe* 341. F

Where the Owner is to pay a *Modus* for a Park, or a Shoulder of every Buck. How it ſhall be when it is diſpark'd.

Where a Preſcription is to pay Money for all the Tithes of ſuch a Park; there, if it be diſpark'd, he ſhall pay no Tithes: But if it be to pay a Shoulder of every Buck; there, if it be, he ſhall pay Tithes as of other Lands. *Cro. Eliz.* 467. *pl.* 25. G

A Layman, before the Statute of Diſſolutions, could not have an Inheritance in Tithes.

A Layman cannot have an Inheritance in Tithes by the Common Law, but by the Statute of Diſſolution he may, for they are now a Lay-Fee. See 11 *Rep.* 13. *b.* H

Tithe ſhall be paid by the Leſſee of the Glebe.

A Parſon leaſes his Glebe, *cum proficuis, &c.* (and ſays not, the Tithes) at a Rent for all Demands, yet the Leſſee ſhall pay Tithe to the Leſſor. 11 *Rep.* 13. *b.* I

Where the Leſſee of the Glebe ſhall not pay ſmall Tithes to the Vicar.

A Vicarage was endowed with *Minutis decimis totius Parochiæ*, yet held, That he ſhall not have *Minutæ Decimæ* of the Glebe of the Rectory; unleſs particularly mentioned in the Indowment. *Cro. Eliz.* 579. K

The Plaintiff ſays, He was Proprietor, and doth not ſet forth his Title, yet good.

In Debt for Tithes he ſays, That he was Proprietor; but ſhews not how, nor any Title, yet good: For it is only a Conveyance to the Action. *Cro. Jac.* 362. L

Timber-Trees, Loppings, Bark or Roots, ſhall pay no Tithes.

Tithes ſhall not be paid of Timber-Trees, nor any of their Loppings; nor for any Thing growing out of their Roots; nor for Bark, nor old decayed Trees, nor for Roots of a Coppice grubbed up. *March* 58. *pl.* 89. But for Acorns it ſhall. 11 *Rep.* 48. *b.* 49. *a.* M

A **An** Abbot held Lands diſcharged of the Payment of Tithes, and aliens to a Lay Corporation; the Alience ſhall pay Tithes: Becauſe it ſhall be intended to be a perſonal Preſcription, and not a real Compoſition. 1 *Lev.* 185.

An Abbot held Lands diſcharged of the Payment of Tithes, and aliens to a Lay Corporation, the Alienee ſhall pay Tithes.

B **Flax**, Hemp, *&c.* as well growing in Fields in great Quantities, as in Gardens and Backſides, are minute Tithes: By three Judges; but by *Holt*, Chief Juſtice, they are minute Tithes when they grow only in Gardens, and great Tithes when they grow in Fields. Alſo Milk, Wooll, Honey, *&c.* are minute Tithes. 3 *Lev.* 365. See *Poſtea.*

Where Flax, Hemp, *&c.* are minute Tithes, and where not.

Milk, Wooll, Honey, are minute Tithes.

C **See** the Act made 7 *&* 8 *W.* 3. *cap.* 6. *For the more eaſy Recovery of ſmall Tithes:* Which Act was made perpetual, by an Act made 3 *&* 4 *Annæ*, *cap.* 18.

The Act of 7 & 8 **W. & M.** cap. 6. for the Recovery of ſmall Tithes.

3 & 4 **Annæ.**

D **See** 3 *&* 4 *W. & M. cap.* 3. *For aſcertaining of the Tithes of Hemp and Flax*; and not to be above four Shillings *per* Acre: Made perpetual 7 *Annæ.*

Tithes of Hemp, *&c.* **Stat.** 3 & 4 **W. & M. cap.** 3.

E **The** *Ciſtercians*, *Templers*, and *Knights of St. John of Jeruſalem*, were diſcharged from Payment of Tithes, by their Order: 2 *Rep.* 44. *&* 37. *b. Dyer* 277. But their Farmers were not. 2 *Leon. Caſe* 95.

The *Ciſtercians*, *Templers*, and *Knights of St. John of Jeruſalem*, diſcharged by their Order.

F **Tithes** are not payable for Conies, unleſs by Cuſtom. *March.* 56. *pl.* 87.

No Tithes for Conies, unleſs by Cuſtom.

G **Nor** for Quarries of Stone; nor of Brick or Clay. *March* 58. *pl.* 89.

Nor for Quarries of Stone, nor of Brick or Clay.

H **Unity** no Diſcharge of Tithes; and what are good Diſcharges, and what not. 4 *Leon. Caſe* 124.

Unity no Diſcharge; what are good Diſcharges, and what not.

I **By** an Act made 7 *&* 8 *W.* 3. *For the more eaſy Recovery of ſmall Tithes, when they do not amount to above forty Shillings from any one Perſon,* it is enacted, That every Perſon ſhall well and truly ſet out and pay all ſmall Tithes, and all Compoſitions and Agreements for the ſame; with all Offerings to whom they ſhall be due.

The Act for the more eaſy Recovery of ſmall Tithes under 40 *s.*

Every Perſon ſhall ſet out and pay his ſmall Tithes and Offerings.

K **That** if any Perſon ſhall not pay them within twenty Days after Demand, then Complaint may be made to two Juſtices not intereſted therein, and neither of them Patron.

If not paid in twenty Days, to complain to two Juſtices of the Peace.

L **The** two Juſtices muſt, by Writing under their Hands and Seals, ſummon, by reaſonable Warning, the Perſon complained of; and after his Appearance, or in Default thereof, and upon Proof upon Oath of the Summons, proceed to determine the Complaint; and upon Evidence produc'd, in Writing under their

The Juſtices muſt ſummon the Perſon complained of, and for Default of Appearance determine the Matter, and give Coſts not exceeding 10 *s.*

Hands and Seals, adjudge the Caſe, and give ſuch reaſonable Allowance for ſuch Tithes, *&c.* with-held, as they ſhall think reaſonable, and Coſts not exceeding ten Shillings.

On Refuſal to pay, the Conſtables, *&c.* by Warrant, to diſtrain, and after three Days ſell, rendering the Overplus to the Owner.

That on Refuſal to pay in ten Days after Notice, the Conſtables and Churchwardens, or one of them, by Warrant under the Hands and Seals of the two Juſtices, ſhall diſtrain the Party's Goods; and after three Days ſell the ſame, and ſatisfy the Sum and Charges for making and keeping the Diſtreſs, as the Juſtices ſhall think fit; rendering the Overplus to the Owner.

The Juſtices may ſwear the Witneſſes.

The Juſtices have Power to adminiſter an Oath to the Witneſſes, for the better Diſcovery of the Truth. B

Not to extend to *London*, or other Places ſettled by Parliament.

This Act not to extend to the City of *London*, nor any Place otherwiſe ſettled by Parliament. C

Complaint muſt be made within two Years.

No Complaint to be heard by any Juſtice, unleſs made within two Years after the Tithes are due. D

There may be an Appeal to the Seſſions, and what is to be done there.

When the Judgment may be removed.

Perſons aggrieved may appeal to the Seſſions, who are to determine the Matter; and if they ſee Cauſe, reverſe the Judgment; but if they ſee Cauſe to confirm the Judgment, then they ſhall decree the ſame by Order of Seſſions, and give ſuch Coſts againſt the Appellant as they ſhall think fit, to be levied as aforeſaid: And no Judgment to be had by Virtue of this Act ſhall be removed, by any Writ out of any of the Courts at *Weſtminſter*, or other Court, unleſs the Title of ſuch Tithes ſhall be in Queſtion. E

That if the Party inſiſts upon a Preſcription, and *Modus*, and puts in Security for the Payment of Coſts, the Juſtices ſhall proceed no further, but it muſt be determined by Law.

That if any Perſon complained of, ſhall before the Juſtices inſiſt upon any Preſcription, or *Modus*, or Title, to be freed from the Payment of Tithes, and deliver the ſame, ſubſcribed by him, to the Juſtices, and give the Plaintiff Security to be allowed by the Juſtices to pay Coſts at any Trial at Law, in Caſe the Matter inſiſted upon ſhall not at the Trial be allowed, then the Juſtices ſhall forbear to give Judgment; and then the Plaintiff may proſecute in any other Court, as before the making of this Act. F

The Judgment of the two Juſtices muſt be inrolled at the next Seſſions. Fee for it.

The Judgment of the Juſtices muſt be inrolled the next Seſſions, by the Clerk of the Peace, for which he ſhall have but one Shilling. G

Where the Party removes to another County, a Juſtice, upon Certificate, muſt execute it.

That if any Perſon after Judgment had, and the Money levied, ſhall remove out of the County, *&c.* the Juſtices may certify their Judgment; and any other Juſtice, where the Party ſhall be, is by his Warrant to levy the Sum adjudged. H

A **If** the Juſtices find the Complaint to be falſe, they may award Coſts againſt the Plaintiff, not exceeding ten Shillings.

Where Coſts may be awarded to the Defendant.

B **Perſons** ſued for any Thing done by this Act may plead the general Iſſue, and ſhall have double Coſts.

Defendant may plead general Iſſue, and ſhall have double Coſts.

C **That** if any Parſon ſhall ſue in the Exchequer, or Eccleſiaſtical Courts, for Tithes under forty Shillings, he ſhall have no Benefit of this Act.

A Parſon ſuing in any Court, not to have the Benefit of this Act.

D **When** *Tumor Papalis* was in *England*, all Monks were, in reſpect of their Order, diſcharged of Tithes; who afterwards increaſing, and having great Revenues, Holy Church was thereby impoveriſhed, *& filia devoravit matrem.* For Remedy whereof Pope *Paſcal* the Second ordained, That *Ciſtercians*, *Templers*, and *Hoſpitallers*, ſhould be only diſcharged, and that all other Orders ſhould pay Tithes; and that alſo by reaſon of their great Revenues was found to be an Impoveriſhment to the Church: And then Pope *Adrian* ordained, That the Lands of the *Templers*, *Ciſtercians*, and *Hoſpitallers*, *quæ propriis manibus excoluntur*, ſhould be only diſcharged. And now the Statute of 31 *H.* 8. *cap.* 13. *ſect.* 21. all Lands which were in the Hands of the Abbots, *&c.* were diſcharged of the Payment of Tithes. *Cro. Jac.* 454.

The ſeveral Manners how Lands came to be diſcharged of the Payment of Tithes.

The *Ciſtercians*, *Templers*, and *Hoſpitallers*.

Only their Lands *in propriis manibus.*

And all Lands in the Hands of the Abbots, *&c.* at the Diſſolution. 31 **H. 8. cap. 13. ſect. 21.**

E **Predial** Tithes are collateral to the Land, and if he who hath the Tithes and the Land, makes a Feoffment, the Tithes do not paſs included in the Feoffment. *Cro. Jac.* 452. *pl.* 30.

Predial Tithes are collateral to the Land, and do not paſs by the Grant of the Land.

F **Twenty** Years in the Eccleſiaſtical Law makes a Preſcription for the Church, and forty Years againſt it. *Cro. Jac.* 454.

Twenty Years makes a Preſcription for the Church, and forty Years againſt it.

G **It** is good to ſay, That the Abbot of *B.* was ſeiſed in Fee of a Cloſe called *C.* in *D.* and held the ſaid Cloſe, and took all the Profits thereof, in Right of all Tithes in the Hamlet of *E.* Upon a Motion in Arreſt of Judgment, it was held, That it being ſo antient, it cannot be ſhewn when or by whom given; but having always had it in Lieu of Tithes, it is good. *Cro. Jac.* 501. *pl.* 10.

Where a Cloſe was held Time out of Mind, in diſcharge of Tithes of ſuch an Hamlet, is good.

H **Tithes** are not payable for a Fulling-Mill; for of ſuch Things, whereof the Gain comes only by Labour of Men, Tithes are not payable. *Cro. Jac.* 524.

No Tithes for a Fulling-Mill; nor for Things which come only by the Labour of Man.

An Abbot of the *Ciſtercian* Order leaſed the Demeſnes, and when the Abbey was diſſolved, the Leaſe was in Being; The King's Grantee ſhall hold them diſcharged, ſo long as they are in his, not his Farmer's Hands; and the King and his Grantee ſhall hold it diſcharged, as the Abbot did for the Inheritance.

An Abbot of the *Ciſtercian* Order, that held the Lands diſcharged of Tithes, *dum propriis manibus excolebant*, which were Parcel of the Demeſnes, but in Leaſe for Years, at the Diſſolution; the Queſtion was, Whether the Owner ſhould hold them diſcharged *in ſuis propriis manibus?* And adjudged, That he ſhould; for altho' the Farmer paid Tithes at the Time of the Diſſolution; yet, *quoad* the Abbot, the Inheritance was diſcharged of Tithes; and the King and his Patentee ſhall hold it diſcharged, as the Abbot held it for the Inheritance. *Cro. Jac.* 559. *pl.* 6. A

The four ſeveral Diſcharges of Tithes.

There be divers Diſcharges of Tithes. B

1. **Real** Compoſition which a Layman may have.

2. **Diſcharge** by Reaſon of Order, as *Ciſtercians, &c.*

3. **By** Reaſon of Popes Bulls.

4. **By** Preſcription, which ought to be by a Spiritual Corporation.

Unity is no Diſcharge.

Unity of Poſſeſſion is not any Diſcharge in itſelf of Tithes. *Cro. Jac.* 607. *pl.* 3. 608, 609. C

Tithes of Wood are payable to the Vicar.

Tithes of Wood are *minutæ decimæ*, and ſhall be paid to the Vicar. *Cro. Car.* 28. *pl.* 2. D

No Tithe for Cattle eaten in the Family, nor for Pail and Plow.

Tithes ſhall not be paid for any Cattle eaten in the Family, no more than for Cattle reared for the Pail and Plow. *Cro. Car.* 237. *pl.* 20. E

Where Tithes are payable for Fiſh.

Tithes for Fiſh taken in the Sea, and great Rivers, are payable in ſome Places by Cuſtom. *Cro. Car.* 264. *pl.* 12. F

Tithes not payable for Fiſh taken in Rivers.

Tithes are not payable for Fiſhes taken in Rivers, unleſs there be a Cuſtom for it. *Cro. Car.* 339. *pl.* 1. G

Not for Conies.

Tithes not payable for Conies. *Cro. Car.* 339. *pl.* 1. H

No Tithes for Tares given to Plow-Cattle.

No Tithes for green Tares given to Plow-Cattle. *Cro. Car.* 393. *pl.* 4. I

The Statute of Limitations doth not extend to an Action of Debt for Tithes.

The Statute of Limitations doth not extend to an Action of Debt for Tithes. *Cro. Car.* 513. *pl.* 10. K

Tithes ſhall be paid for young Trees in a Nurſery, to be ſold and planted.

Tithes ſhall be paid for young Trees planted in a Nurſery, to be dug up and ſold. *Cro. Car.* 526. *pl.* 5. L

Tithes ſhall be paid for Honey.

Tithes ſhall be paid for Honey. *Cro. Car.* 559. *pl.* 2. M

A **How** Tithes ſhall be paid for Houſes in *London*, 31 *H.* 8. *cap.* 12. where follows alſo the Decree. *Note*, Upon the Act for rebuilding the City of *London* after the Fire, it is aſcertained what ſhall be paid to every Pariſh therein mentioned, and how to be levied. 22 & 23 *Car.* 2. *cap.* 15.

How Tithes are to be paid for Houſes in *London*, by 37 **H**. 8. cap. 12. And how now by 22 & 23 **Car.** 2. cap. 15.

B **Whether** where a Prior has a Manor, and the Tithes of it, and he by Deed before Time of Memory grants it in Fee, and that the Grantee *in pro decimis Domini & duabus Carneatis terræ*, ſhould pay 5*s. per Ann.* to the Prior, *&c.* which is accordingly paid by the Grantee to the Prior and his Succeſſors; this be a good *Modus*, it not being paid to the Parſon, but to him who had a Portion of the Tithes. *Skin.* 51. 239.

Of a *Modus*.

C **Upon** a ſpecial Verdict it was found, that twenty ſix Acres only in a Pariſh which conſiſt of 1200, were ſown by ſeveral Perſons with Flax, and adjudged that this was a ſmall Tithe and belonged to the Vicar, who was endowed *de minutis decimis*. *Skin.* 341, 356.

Small Tithes.

D *Minutæ decimæ* ſhall be conſtrued according to the Nature of the Thing, and not of the Place where it is ſown. *Skin.* 356.

The like.

E **Ruled** at the Aſſiſes, that if a Man ſow his Land with Clover, and make his Profit by the Seed, this being a Grain, the Parſon ſhall have Tithe of it; but if he convert it into Hay only, and make his Profit of the Hay, the Vicar being endowed of Tithes of Hay ſhall have it as a ſmall Tithe. *Skin.* 341.

The like.

F **Whether** a Cuſtom to be diſcharged of Tithes of barren Cattle within a whole hundred, be good. *Skin.* 560, 561.

Diſcharge of Tithes.

G **Tithes** of Hay ought to be paid in Graſs Cocks. *Mod. Caſes in Law and Equity* 117.

Of Hay.

H **The** Party may be ſued in the Dioceſe where he ſubſtracted the Tithes, tho' he lived in another Dioceſe. 3 *Salk.* 90.

In what Dioceſe to be ſued.

I **Trees** above twenty Years growth are not titheable. 3 *Salk.* 347.

Trees.

K **The** ſeveral Ways how Tithes are diſcharged. *Ibid.* 348.

Diſcharge.

L **Tithes** of Flax are ſmall Tithes, and belong to the Vicar. *Ibid.* 849. *Comb.* 201, 209.

Flax.

M **Tithes** of Agiſtments and Herbage are due of common Right, and a Hundred can't be diſcharg'd of them by Cuſtom. *Comberb.* 403. *Salk.* 650.

Of Agiſtments and Herbage.

N **But** Tithe-Wood is not due of Common Right, yet payable as a cuſtomary Tithe: So of Mills. *Comberb.* 404.

Of Wood.

Declaration. **In** Debt for the treble Value, on the Statute 2 *Ed. 6.* where it is not ſhewn in the Declaration that the Defendant had not agreed with the Parſon, 'tis ill on a Demurrer, but good after Verdict. *Comberb.* 283. A

Prohibition. **No** Prohibition on a Libel for Tithes, ſuggeſting a Grant by Patent, which is cognizable at Common Law, becauſe the Spiritual Court has Cognizance of the Principal, *&c.* *Ibid.* 29. B

Modus. **Yet** they cannot try a *Modus* there, tho' the original Suit be for a *Modus*, becauſe the Preſcription differs. *Ibid.* 427. C

But if the Queſtion be Payment or Non-payment they may proceed. *Ibid.* D

The like. **Payment** of Tithes of one Species is not a good *Modus* for all. *Salk.* 657. E

The like. *Modus* of ten Fleeces of Wooll and two Lambs for all Tithes (the Court divided) if good or not. *Ibid.* 656. F

The like. **A** *Modus* ſhould be as certain as the Duty deſtroyed by it. *Ibid.* 657. G

Ergo, a *Modus* to pay 2 *s.* in the Pound of the improved, is ill. *Ibid.* H

The like. **A** *Modus* to pay Part of the very Thing that is Tithe, is not good, unleſs payable in another Manner. *Ibid.* 656. I

The like. *Ergo*, if to pay a whole Meal's Milk ſuch a Day, and ſo every ninth and tenth Day, Night and Morning, till, *&c.* in lieu of the Tithe-Milk, is ill. *Ibid.* K

Proof of the Suggeſtion. **A Suggeſtion** in Caſe of Tithes muſt be proved within ſix Kalendar Months of the *Teſte* of the Prohibition. *Salk.* 554. L

Compoſition. **See** the Caſe of a Compoſition for Tithes *quamdiu ambabus partibus placuerit*, &c. *Ibid.* 144. M

Title.

A **Every Right is a Title, but every Right is not ſuch a Title, for which an Action lies; and therefore** Titulus eſt juſta cauſa poſſidendi quod noſtrum eſt, **and ſignifies the Means whereby a Man cometh by Land, as his Title is,** viz. **by Fine, Feoffment,** &c. Et dicitur titulus a tuendo; **becauſe by this he holdeth and defendeth his Land.** Co. Litt. 345. b.

Title, what.

B **If** there be an Inquiſition found, by which the King is intitled unto Lands, and the Inquiſition is not anſwered nor traverſed, the Lands found in the Inquiſition ſhall be ſuppoſed to be in the Hands of the King, and Proceſs thereupon ſhall go out for the King: 21 *Car. B. R.* Becauſe there appears nothing to the contrary to queſtion the King's Title found by the Inquiſition.

If an Inquiſition found for the King be not anſwered nor travers'd, the Lands found ſhall be ſuppoſed to be in the Hands of the King.

C **If** one be admitted to traverſe an Office, this Admiſſion of the Party to the Traverſe doth ſuppoſe the Title to be in him: 21 *Car. B. R.* Or elſe he had no Cauſe of Traverſe.

The Title ſhall be ſuppoſed in him who is admitted to traverſe an Office.

D **If** in an Action of Treſpaſs and Ejectment, neither the Plaintiff nor the Defendant can make out a good Title, then the Party that hath had the moſt antient Poſſeſſion of the Lands in queſtion, ſhall be judged to have the beſt Title: *Paſch.* 23 *Car. B. R. Mich.* 1649. *B. S.* For an antient Poſſeſſion of Lands is a Badge of a good Title to them, where a better Title doth not appear.

If neither Plaintiff nor Defendant can make out a good Title, the moſt antient Poſſeſſion ſhall be accounted the beſt.

E **In** an Action of Treſpaſs brought for taking away of Goods, the Plaintiff needs not in his Declaration ſet forth his Title to the Goods: *Paſch.* 23 *Car. B. R.* For by the bringing of the Action it is ſuppoſed, That they were in his Poſſeſſion before the Defendant took them away from him, and that Poſſeſſion is Title enough to maintain the Action, and ſo he need not ſet forth any particular Title in his Declaration; but he muſt at the Trial prove his Title, if it be queſtioned.

In Treſpaſs for taking his Goods, the Plaintiff need not ſet forth his Title to them.

The Caſual Ejector is not bound to defend the Title of the Land.

He that is made Ejector to try the Title of Land, is not bound to defend the Title of Land; and therefore if he whoſe Title is truly concerned, will not ſave him harmleſs, if the Trial ſhall paſs againſt him, he may confeſs a Judgment, and ſave himſelf of the Trouble which otherwiſe may befal him by being made Ejector: *Mich.* 1650. *B. S.* But he muſt firſt acquaint him whoſe Title is concerned, that he will do it, and then if it be done, he hath no Cauſe to complain: This was antiently the Practice, before the Rule for confeſſing of Leaſe, Entry, and Ouſter was practiſed. A

Where by the Record it appears the Plaintiff hath no Title, he ſhall have no Judgment.

Where it appears upon the whole Record that the Plaintiff hath no Title, he ſhall have no Judgment. *Lutw.* 1631. B

A Man cannot recover by deſtroying of my Title, without ſhewing of a better.

When you will recover any Thing from me, it is not enough for you to deſtroy my Title, but you muſt prove yours to be better than mine. *Hob.* 103. C

Every Man muſt recover by his own Strength, not by the Defendant's Weakneſs.

You ſhall not fly upon my Title, and forſake your own; for you muſt recover by your own Strength, not by my Weakneſs. *Hob.* 104. D

In an Action for a Nuſance, it is well enough to ſay, *Poſſeſſionatus* only.

Where an Action is brought for a Nuſance, and he intitles himſelf generally, by ſaying he is poſſeſſed *pro termino Annorum*, it is well enough: And he need not ſet forth particularly the Commencement of his Eſtate, becauſe he doth not make the Title his Caſe. 2 *Mod.* 71. E

Where a Man may juſtify upon his Poſſeſſion without ſetting forth a Title. 3 *Salk.* 220. F

Where to be ſet forth, and where not.

A Title either by Grant or Preſcription need not be ſet forth where the Action is grounded on the Poſſeſſion, 3 *Salk.* 12. Where it muſt be ſet forth, 274, 361. Where it need not, 36, 278, 306. G

Where a Title is ſet forth but inconſiſtent, it makes the Pleadings ill. 3 *Salk.* 14. H

Nil habuit in Tenementis.

In Debt for Rent the Defendant pleaded that the Plaintiff *nil habuit in tenementis*, he need not ſet forth his Title. 3 *Salk.* 211, 302. I

Toſt

Toft and Croft.

See Ejectment.

A A Toft is a Piece of Ground where an House formerly ſtood, and is fallen down or demoliſhed. Paſch. 23 Car. 1. B.R. Toft, what.

B A Croft is a little Piece of Ground near to an Houſe, and uſed with it. Ibid. Croft, what.

Toll.

See {Antient Demeſn. Que Eſtate.

C Toll is moſt properly a Payment uſed in Cities, Towns, Markets and Fairs, for Goods and Cattle bought and ſold; and is always to be paid by the Buyer, and not by the Seller, except there be a particular Cuſtom for it. There are alſo ſeveral other Tolls, which ſee in Terms of the Law, in Title Toll. Toll, what.

D An Indictment lies againſt a Miller for taking of too great Toll. See 5 *Mod.* 13. An Indictment lies for taking too great Toll.

Every Preſcription which charges the Subject with a Duty, ought to ſhew a good Reaſon for it.

A **Every** Preſcription to charge the Subject with a Duty or Toll, muſt import a Benefit or Recompence to him, or elſe ſome Reaſon muſt be ſhewn why a Duty is claimed. 4 *Mod.* 323. 1 *Mod.* 331.

By what Grants Toll is demandable.

The King's Grantee may have it.

B **By** a Grant of a Fair *cum omnibus libertatibus, &c.* Toll is not due or demandable, for Toll is not an Incident to a Fair; for many Fairs have not any Toll: But by the expreſs Words of the Grant, the King's Grantee may have Toll. *Cro. Eliz.* 591. *pl.* 29. Or by Preſcription. *Moore*, Caſe 680.

The King cannot appoint a burthenſome Toll: May grant a Toll to a new Fair.

C **The** King cannot appoint a burthenſome Toll, but a Penny or Two-pence, or ſome ſuch ſmall Sum. *Cro. Eliz.* 559. The King may grant a reaſonable Toll to a new Fair. *Moore*, Caſe 680.

Toll-Traverſe, and Toll-through a Man may have by Preſcription, and why.

The Queen may grant a petit Toll.

D **One** may have Toll-Traverſe and Toll-through by Preſcription, but it ought to be for ſome reaſonable Cauſe which muſt be ſhewn, *viz.* that he is to maintain a Cauſeway or repair a Way or a Bridge, or ſuch like; and the Queen may grant ſuch Toll being a petit Thing, in reſpect of its being a greater Benefit or Eaſe to the People. *Cro. Eliz.* 711.

A Grant of ſuch Toll as is taken *ibi & alibi*, is naught.

E **A Grant** of Toll to a Corporation to be taken at *W.* Bridge, and the Words were of ſuch Toll as is taken *ibi & alibi infra Regnum Angliæ*, is uncertain and void. *Cro. Jac.* 421. *pl.* 2.

So alſo of ſuch Toll as had been uſed to be paid, *ibi vel alibi*.

F **Alſo** it was of ſuch Toll as had uſed to be paid *ibi vel alibi infra Regnum, &c.* and averring Payment at another Place, but not there, it is ill. *Cro. Jac.* 421, 422.

What Tolls are good, and what not.

G **What** Tolls of any Sort are good, and what not; and where the Cuſtoms and Preſcriptions for them are good, and where not. See 4 *Mod.* from 319, to 323.

Toll-Traverſe, what.

H **Toll-Traverſe** is to paſs a nearer Way; and he who claims the Toll ought to repair it, becauſe he receives Money for it. 6 *W. & M.*

Appurtenant to a Manor.

I **Toll** may be appurtenant to a Manor. 2 *Mod.* 144.

Toll-through, what.

K **Toll-through** is a Highway, and there ought to be a Recompence for it, or elſe it is void. 6 *W. & M.* See 3 *Lev.* 424, 425. 2 *Mod.* 143. 4. See *Les Termes de le Ley*. *Moore*, Caſe 193.

What Preſcription for Toll is good.

L **Preſcription** to repair a Quay, and to have Tolls of all Goods brought into the River, is naught; but to have Toll for all Goods landed in his Manor, is good; or to have Port-Toll for all Goods coming into his Port. 2 *Lev.* 96, 97.

Corn brought to Market and not ſold, where there ſhall be Toll.

M **Toll** is not due of common Right for Corn brought to Market and not ſold, but by Cuſtom it is. *Moore*, Caſe 1124.

A **The** King cannot grant a Toll for a Thing not brought into the Market to be ſold. *Moore, Caſe* 1502.

For what the King cannot grant a Toll.

B **In** a Juſtification for Toll, to ſay *vendidit*, and not *ibidem vendidit*, is naught. *Lutw.* 1503.

How to juſtify for Toll.

C **The** Owner of a Port may have Toll by Preſcription, without any Conſideration. *Lutw.* 1523.

The Owner of a Port may have Toll by Preſcription.

D **How** to preſcribe for Toll and Stallage in a Fair. *Lutw.* 1518, 1519. And for Toll in a Highway. 1 *Mod.* 144.

How to preſcribe for Toll and Stallage in a Fair.

E **What** Grants of Toll are good, and what not, and how to juſtify for Toll. *Lutw.* 1380.

What Grants for Toll are good, and what not.

F **To** whom the Privilege of Toll extends for Lands in ancient Demeſne. See Title **Antient Demeſne.**

What Privilege Tenants in ancient Demeſne ſhall have.

G **Of** Toll, and what is liable to be diſtrained for Toll, and much other good Matter. 5 *Mod.* 361 to 363.

Of Toll, and what is diſtrainable for it.

Trade, See **London.**

Traverſe.

See **Inducement.** **Iſſue.** **Juſtification.** | **Pleas and Pleadings.** **Que eſt eadem.** **Time.**

H **A Traverſe is the denying of ſome Matter of Fact alledged before, with an abſque hoc, that ſuch a Thing was done or not: Then comes the other Side, and ſays, That it was done, and this makes a ſingle and good Iſſue. There are likewiſe Traverſes of Offices, and Traverſing of Indictments.**

A Traverſe, what.

I **Regularly**, a Traverſe cannot be taken upon a Traverſe, where a Traverſe is well taken to the material Point, and goes to the Subſtance of the Action; but where the firſt Traverſe is idle, and not well taken, nor pertinent to the Matter, there to that

A Traverſe cannot be taken on a Traverſe, except the firſt be not well taken.

which was ſufficiently confeſſed and avoided before, the other Party may well take a Traverſe after ſuch immaterial Traverſe taken before. 1 *Saund.* 32.

It ought to have an Inducement.

A Traverſe ought to have an Inducement to make it relate to the foregoing Matter, or elſe it is not good and formal: *Mich.* 22 *Car. B. R.* For elſe it cannot be known what is traverſed thereby. A

Where the Party may traverſe the County, if the Court change the *Venue*.

If the Court ſhall change the *Venue*, and lay it in a County where the Cauſe of Action did not ariſe, the Party may traverſe the County if he pleaſe, by ſaying, the Cauſe of Action, if any be, did ariſe in the County of *A.* and conclude, and ſo draw the *Venue*, by pleading with an *abſque hoc*, that the Cauſe of Action did ariſe where the *Venue* is laid, into the right County where the Cauſe of Action did ariſe: *Trin.* 23 *Car. B. R.* B

Probate of a Will not traverſable.

The Probate of a Will is not traverſable. *Raym.* 406, 407. C

If Defendant have pleaded to all the material Points, he need not take a Traverſe.

Where the Defendant hath given a particular Anſwer in his Plea to all the material Matters contained in the Declaration, there he needs not to take a Traverſe: *Paſch.* 24 *Car. B.R. Paſch.* 1648. *B.S.* For a Traverſe is the Affirming of one Thing, and the Denial of another Thing; and when a Thing is anſwered, what need is there of a Denial of it? For the anſwering of it doth ſuppoſe ſuch a Thing was. D

Where the Diſſeiſin is to be traverſed and not the Diſcent.

Where there is a Diſſeiſin and a Diſcent alledged in a Declaration, concerning the Title of Land, if the traverſing of the Diſſeiſin will make an End of all the Matter in Queſtion, there the Diſſeiſin is to be traverſed, and not the Diſcent: This is to be underſtood in ſuch Caſes, where by Suppoſition the Party comes to the Eſtate by Diſſeiſin: *Paſch.* 24 *Car. B. R.* It is a Maxim, That a Diſſeiſin alledged in the Bar, or Replication, is always traverſable. *Dyer* 365. *b.* 366. *a.* E

Where the Defendant need not take a Traverſe.

Where the Defendant hath confeſſed and avoided all the Matter that is contained in the Declaration, there he needs not to take a Traverſe: *Paſch.* 24 *Car. B. R.* For a Confeſſing and Avoiding is a full Anſwer of the Matter alledged, and ſo there needs no Traverſe of it, or Denial of the Thing. F

Five ſeveral Rules to be obſerved in Traverſes.

Five ſeveral Rules are to be obſerved in Traverſes in Pleadings; which ſee in Title **Pleas and Pleadings.** G

No Traverſe ought to be, but where the Thing traverſed is iſſuable.

No Traverſe ought to be taken, but where the Thing traverſed is iſſuable. 2 *Cro.* 221. *pl.* 3. H

Where the Subſtance of the Bar is traverſed, it is good.

When the Subſtance of the Bar is traverſed and found againſt the Tenant or Defendant, all the Matter in the Bar is traverſed, and he ſhall have no Advantage of any Part of the Bar. *Long Quinto* 11. *b.* I

The Omiſſion of a material Traverſe, is naught.

Where a Traverſe is material and omitted out of the Pleadings, there the Pleadings are naught upon a general Demurrer. *Mich.* 6 *W.* & *M.* K

Where

A **Where** a Traverſe is immaterial, unleſs there be a ſpecial Demurrer to it with the Cauſes ſhewn, it ſhall not vitiate the Pleadings; but it is naught upon a ſpecial Demurrer. *Mich. 6 W. & M.*

An immaterial Traverſe will not hurt without a ſpecial Demurrer.

B **Where** particular Eſtates are in Debate, the Elder, and not the Puiſne, is to be traverſed. *Lutw.* 1632.

What particular Eſtate is to be traverſed.

C **When** both Parties make their Conveyance from one and the ſame Anceſtor, there always the meſne Conveyance is traverſable. *Cro. Eliz.* 398.

Where the meſne Conveyance is always traverſable.

D **Where** the Inducement to the Traverſe is ill, and the Traverſe is well taken, this is good upon a general Demurrer; but upon a ſpecial Demurrer ſhewing this for Cauſe, it is naught. *Mich. 5 W. & M.*

Where the Inducement is ill, and the Traverſe good; this is ill upon a ſpecial Demurrer.

E **What** makes a good Inducement to a Traverſe. See Title **Inducement.**

What is a good Inducement.

F **In** an Ejectment the Defendant demurred, becauſe the Plaintiff took a Traverſe without making of any Title or any Inducement: But held good; for the Defendant had avoided the Plaintiff's Title, and the Plaintiff traverſeth the chief Matter which avoids his Title; and it is not neceſſary to make a Title in Ejectment or Treſpaſs; but where Land is demanded, *viz.* in a real Action, it is otherwiſe; but it had been better to ſay, That he was ſeiſed in Fee and demiſed. *Cro. Eliz.* 671. *pl.* 28. 918. *pl.* 11. 288. *pl.* 4.

The Difference between a Traverſe in Ejectment or Treſpaſs, and where Land is demanded.

G **A Converſion** is laid the 1ſt of *December*; the Defendant juſtifies in *October*, and ſo meets not with the Plaintiff in Time, and therefore he ought to traverſe it; and the Traverſe *aliter vel alio modo* will never anſwer the Time. *Cro. Eliz.* 443, 439. *pl.* 55.

Where the Time ought to be traverſed, *aliter vel alio modo* will not do.

H **Where** a Man pleads in Bar, and the Plaintiff replies Matter in Law, he ſhall never traverſe the Bar. *Lit. Rep.* 15.

Where the Bar ſhall never be traverſed.

I **Where** a perfect Bar is pleaded, the Traverſe makes the Plea double; for it requires a double Anſwer. *Ibid.*

A Traverſe makes a perfect Bar double.

K **In** what Caſes a Seiſin in Fee of the Conuſor, or any other Party to the Fine, is traverſable. *Lutw.* 1624.

Where the Seiſin in Fee of any Party to the Fine, is traverſable.

L **Allegation** of Seiſin in the Conuſor is at moſt but Matter of Form to induce the Pleading of a Fine, and is not the Subſtance to be traverſed. *Lutw.* 1625.

The Allegation of Seiſin of the Conuſor not traverſable.

M **Where** the Seiſin in Fee is traverſable, and where the Leaſe under the Seiſin in Fee, and in what Caſes there ſhall be Traverſes. *6 Rep.* 24. *a. b.*

Where a Seiſin in Fee, or Leaſe *per Mandatum*, is traverſable.

N **Where** a Diſſeiſin is alledged by Way of Conveyance to the Title or Poſſeſſion of the Plaintiff; this is not traverſable. *Dyer* 365. *b. pl.* 34. But a Diſſeiſin pleaded in Bar, or in a Replication, *&c.* is always traverſable. 366. *a. pl.* 35. See *Moore*, Caſe 708.

Where a Diſſeiſin is traverſable, and where not.

Where the Diſcent, and not the Dying ſeiſed is traverſable.

A **The** Dying ſeiſed, and not the Diſcent is traverſable; for of every Thing diſcendible the Dying ſeiſed is the Subſtance, and the Diſcent is the Effect. 1 *Leon.* 310. And ſo is *Dyer* 366. *pl.* 36. And there it is ſaid to be the common Learning. See alſo *Cro. Eliz. pl.* 1. *Benl.* 319. and *Mod. Caſes* 708.

Where the Dying ſeiſed, and not the Diſcent ſhall be traverſed.

B **But** if the Parties do not claim by one and the ſame Perſon, or the Dying ſeiſed be not confeſſed and avoided, there the Dying ſeiſed, and not the Diſcent ſhall be traverſed. 1 *Leon.* 310.

The Pleading, where there is a Leaſe for Years, and a Seiſin in Fee.

C **A Leaſe** for Years cannot be granted but by lawful Grant; and therefore when one claims by a Leaſe for Years, and the other by *Eigne* Grant, he that claims under the *Eigne* Grant ſhall not traverſe the laſt Grant, but the other Party muſt traverſe the *Eigne* Grant, or ſhew how he came by this again to enable a ſecond Grant: But otherwiſe it is in the Caſe of a Feoffment; for there if the Party claims by a former Feoffment, he ought to confeſs and avoid the laſt Feoffment, as by Diſſeiſin, *&c.* For a Diſſeiſor may gain an Eſtate in Fee, but none can gain an Eſtate for Years, but by a lawful Conveyance. 6 *Rep.* 24. *b.* 25. *a.* Or a Copyhold Eſtate but by Surrender. *March* 21.

That Part of the Declaration which will make an End of the Action is traverſable.

D **If** one will take a Traverſe to a Declaration, he ought to traverſe that Part of it, the doing whereof will make an End of the Matter for which the Plaintiff declares, and then is the Traverſe good. *Paſch.* 24 *Car.* 2. *B. R.* Elſe not, for then it is to no Purpoſe.

Where the Conveyance to the Action is traverſable.

E **In** all Caſes where the Defendant may wage his Law, the Conveyance to the Action is traverſable. 1 *Leon. Caſe* 340.

How to traverſe the Title of the Avowant.

F **The** Plaintiff cannot traverſe the Title of the Avowant without ſhewing another Title. 5 *W. & M. B. R.*

Traverſe for Default of Fences.

G **A Traverſe** that the Cattle eſcaped for want of Fences, is good. *Lutw.* 1359.

Sufficiency of Common is traverſable.

H **Sufficiency** of Common is traverſable, and Caſe will lie againſt the Lord for ſurcharging of it. *Lutw.* 107, 108.

What comes after *ita quod* is not traverſable.

I **In** Treſpaſs, that which comes after the *ita quod* is not traverſable, becauſe that is only for Aggravation of Damages. 1 *Lev.* 283.

Where the Traverſe (before) is good; without ſaying, (or after.)

K **Where** the Defendant juſtifies in Treſpaſs, by reaſon of his Freehold, at the Day ſuppoſed in the Declaration; there the Traverſe (before) is good enough. 1 *Leon.* 95. *Caſe* 123. without ſaying, (or after.)

Traverſe of the Time, and Taking, how to be. *Day and Place made* Part of the Iſſue, which ſhould not be.

L **Traverſe** of the Time, and Taking in Treſpaſs, how it ſhall be: 1 *Lev.* 307, 308. Day and Place made Part of the Iſſue, which ſhould not be: 2 *Lev.* 11, 12. and where requiſite. 3 *Lev.* 41.

A **Where** the Place is material, you ought to traverſe all other Places. 3 *Lev.* 113.

Where the Place is material, all other Places ought to be traverſed.

B **Where** the Matter of the Juſtification is local, there you ought to ſhew the Cauſe ſpecially, and traverſe the Place; but not where it is tranſitory: But it ſufficeth, altho' he juſtifies in another Place to ſay, *Quæ eſt eadem captio.* *Cro. Eliz.* 667. *pl.* 21.

How to plead where the Juſtification is local, and how where it is tranſitory.

Quæ eſt eadem.

C **Treſpaſs** and Battery in ſuch a Pariſh and Ward in *London:* The Defendant juſtifies for an Arreſt in *Kent*, and traverſes the Battery in the Pariſh and Ward in *London:* This is naught; for he ought not to traverſe the Place but the County. *Cro. Eliz.* 680. *pl.* 31.

Where the Place of the Battery in the Declaration is not traverſable, but the County in the Plea.

D **Juſtification** in Treſpaſs, *Quæ eſt eadem*, with a Traverſe of the Place, without a Traverſe of the Time, and good. 3 *Lev.* 227.

Quæ eſt eadem, with a Traverſe of the Place, without a Traverſe of the Time.

E *Sciens* is not any direct Allegation, nor ever alledged in any Place; ſo that it is not traverſable or triable. 14 *Rep.* 18. *b.*

Sciens not traverſable, nor triable.

F **Intention** is not traverſable, becauſe the Court cannot know it. 3 *Lev.* 167.

An Intention is not traverſable.

G **Where** a Juſtification goes to a Time and Place not alledged by the Plaintiff, there muſt be a Traverſe of both. 2 *Mod.* 68.

A Traverſe muſt be where a Juſtification goes to the Time and Place not alledged by the Plaintiff.

H **The** Defendant avows the taking in *W.* Acre for Damage-feaſant; the Plaintiff ſays, That they were taken in *B.* Acre, *abſque hoc*, That they were Damage-feaſant in *W.* Acre, this is ill: For he ought to have traverſed the Place of taking, and not that they were Damage-feaſant. *Cro. Eliz.* 372. *pl.* 11.

The taking of the Cattle, and not the Damage feaſant ought to be traverſed.

I **Where** a Traverſe is taken in a Pleading in an Action of Debt upon a Bond, there it is ſufficient to traverſe ſo much as will amount to the Forfeiture of the Bond: But where it is in an Action upon the Caſe, there the whole Matter is traverſable. *Mich.* 6 *W.* & *M. B. R.*

In an Action of Debt upon Bond, the whole Matter need not be travers'd.

K **A Coroner's** Inqueſt is traverſable by Executors, upon the finding of a *Felo de ſe*, not upon a *Fugam fecit*. 2 *Lev.* 152.

A Coroner's Inqueſt, where travers'd.

L **If** there be an Inquiſition found, by which the King is intitled unto Lands, and the Inquiſition is not anſwered or traverſed, the Lands found in the Inquiſition ſhall be ſuppoſed to be in the Hands of the King, and Proceſs thereupon ſhall go out for the King; becauſe there appears nothing to the contrary to queſtion the King's Title found by the Inquiſition.

Where Lands are found for the King upon an Inquiſition, they are in the King, unleſs traverſed.

M **No** Perſon ſhall traverſe an Office, unleſs he can make to himſelf a good Title. *Vaugh.* 64.

Who may traverſe an Office, and who not.

Where one is admitted to traverſe an Office.

If one be admitted to traverſe an Office, this Admiſſion of the Party to the Traverſe doth ſuppoſe the Title to be in him. 21 *Car. B. R.* Or elſe he had no Cauſe of Traverſe. A

What Part of the Plaintiff's Count in a *Quare Impedit* ought to be traverſed.

When in a *Quare Impedit* the Defendant traverſes any Part of the Plaintiff's Count, it ought to be ſuch Part as is inconſiſtent with his Title; and if found againſt the Plaintiff, deſtroys his Title. *Vaugh.* 8, 9, 10. B

Where the King may refuſe his own Title traverſed by the Defendant, and traverſe the Defendant's Title.

Where the King may refuſe to maintain his own Title, which is traverſed by the Defendant, and take a Traverſe to the Title made by the Defendant. *Ibid.* 62, 64. C

What Things are traverſable in *Quare Impedits.*

Where the Preſentation, and not the Seiſin of the Advowſon, is to be traverſed. *Vaugh.* 9, 10, 11, 12. See alſo there, what Matters are traverſable in *Quare Impedit*, and what not, from *fol.* 8. to *fol.* 16. D

How the Avoidance is to be travers'd.

In all Caſes where the Manner of the Avoidance is to be travers'd, they ought to confeſs him to be Incumbent, to whom the Traverſe is. *Lit. Rep.* 15. E

Where a Traverſe upon a Traverſe, is good.

A Traverſe upon a Traverſe is good, where the Place is material. *Moore, Caſe* 496. F

Where there is one Affirmative and a Negative, there needs no Traverſe.

Where a Matter is expreſly pleaded in the Affirmative, which is expreſly anſwered by the other in the Negative, there needs no Traverſe; becauſe there is a ſufficient Iſſue joined. *Cro. Eliz.* 755. G

What not admitted.

That which is immaterial is not admitted by not being traverſed. *Salk.* 561. H

Traverſe to Time.

Where a Traverſe goes to the Matter, all before is waved *aliter* where to Time only. *Ibid.* 642. I

Inquiſition.

Traverſe of an Inquiſition of Forcible Entry is a *Superſedeas* to the Reſtitution. *Ibid.* 587. K

Aſſumpſit.

In *Aſſumpſit* where Satisfaction pleaded, an Iſſue on the Acceptance is good. *Ibid.* 627. L

Non antea.

Non antea is no Traverſe where further Matter muſt be diſcloſed before he can conclude to the County. *Ibid.* 628. M

De injuria Propria.

De injuria ſua Propria is a good Replication to a Juſtification by the Common Law or General Statute. *Ibid.* N

Goes to the Whole.

Abſque hoc that he ouſted him *de premiſſis* goes to every Part. *Ibid.* 629. O

Seiſin.

On pleading a Seiſin generally traverſed, may be taken that he be ſole ſeiſed. *Ibid.* P

The like.

But *quære* the Difference of traverſing a Sole Seiſin as to Tenants in Common and Pareeners. *Ibid.* 630. Q

A **Rent** of 20 *l. per Annum*, granted out of *A.* to commence from the Time that a Diſtreſs ſhould be taken for Rent iſſuing out of *B.* in bar of the Avowry upon a Diſtreſs taken for the Rent of 20 *l.* in *A.* there is a Traverſe, *abſque hoc*, that any Diſtreſs was taken for Rent Arrear, *&c.* in *B.* this is a complicated Traverſe, and not good. *Skinner* 63, 64.

Complicated Traverſe.

B **In** Replevin the Defendant ſays that the Goods are his, *abſque hoc*, that they are the Plaintiff's; the Plaintiff replies that they are his, *abſque hoc*, that they are the Defendant's; this is an immaterial Iſſue. *Ibid.* 65.

Replevin.

C **In** Replevin where the Defendant claims Property the Plaintiff ouhgt to prove the Goods to be his. *Ibid.*

The like.

D **Where** the Traverſe in the Bar is idle, the Plaintiff may traverſe it in the Replication. *Carthew* 99, 100.

Traverſe upon a Traverſe.

E **Preſcription** againſt a Preſcription is not good without a Traverſe. *Ibid.* 117.

Preſcription.

F **In** an Avowry where the Bar is not good for want of a Traverſe. *Ibid.* 165.

Avowry.

G **Where** ſeveral Things may be included in one Traverſe. *Ibid.* 196.

Joinder in Traverſe.

H **See** concerning a Traverſe of a Preſcription for Common. *Ibid.* 65.

Common.

I **Of** a Preſentment in a Court-Leet, and where good. *Ibid.* 74.

Preſentment.

K **Of** Matter which might be given in Evidence upon the General Iſſue. *Ibid.* 82.

Evidence.

L **The** Proſecutor may plead Demur to, or traverſe the Facts in the Return of a *Mandamus*. *Mod. Caſes in Law and Equity* 28, 113.

Mandamus.

M **A Traverſe** is material when it makes the Iſſue too ſtreight. 3 *Salk.* 28.

Material.

N **It** muſt be allowed by the Juſtice of Peace, if the Party tender it upon an Inquiſition or a Forcible Entry on his view. *Ibid.* 170.

When to be allow'd.

O **Where** 'tis repugnant and where only Matter of Form. *Ibid.* 238.

Form.

P **Where** a Plea is not good without a Traverſe. *Ibid.* 352.

Plea.

Q **Where** the Words *Virtute cujus* are not traverſable. *Ibid.*

Virtute cujus.

R **Where** a Matter is confeſs'd and avoided, it need not be traverſed. *Ibid.* 353.

Confeſs and avoid.

S **In** Avowries and Treſpaſs, if a Freehold is pleaded, it muſt be travers'd. *Ibid.* 354.

Freehold.

T **Traverſe**, if purſuant to the Plea, is good. *Ibid.* 355, and what not traverſable. *Ibid.*

When good.

U **A Traverſe** that puts Matter of Record in Iſſue to the County is ill. *Salk.* 521.

Matter of Record.

Where

Concluſion.

Where Traverſe ought to conclude to the County, and where with an Averment. *Salk.* 4. A

Conſideration executory.

A Conſideration executory is traverſable; *ergo*, a *Venue* in that Caſe muſt be laid. *Salk.* 22. B

Replevin.

In Replevin Matter ſuggeſted for a Return in a Plea in Abatement is not traverſable. *Salk.* 93. C

Of the Command.

Where a Traverſe of the Command is ſufficient in Treſpaſs or Replevin, but not in *Clauſum fregit. Salk.* 107. D

Difference of Traverſes.

And ſee a Difference in Traverſes on Avowries and Declarations in Debt, *&c.* *Salk.* 562. E

Treaſon.

See { Counſel and Counſellor.
Trial.

Treaſon, what.

Of Treaſons there are two Sorts, viz. High Treaſon and Petty Treaſon; for which ſee the ſeveral Statutes for that Purpoſe in the Statute-Book. F

Intention of Treaſon is Treaſon in the Eye of the Law.

An Intention of Treaſon, if it can be proved by Circumſtances, is Treaſon in the Eye of the Law. *Trin.* 22 *Car. B. R.* And it is ſo, to ſhew the Odiouſneſs and Greatneſs of the Offence of Treaſon, by puniſhing the very Intentions of it, which are not puniſhable in other Criminal Offences. G

Words may be Treaſon.

Where Words only will amount to Treaſon. See 1 *Lev.* 57. H

No Felony without an Act done, but intending to kill the King is High Treaſon.

Note, Felony cannot be without an Act done, but intending to kill the King is High Treaſon. By *Fineux*, 13 *H.* 8. *fol.* 12. *a.* I

The ſeveral Sorts of Treaſons declared by the Statute of 25 Ed. 3. cap. 2.

The compaſſing and imagining the King or Queen's, or their eldeſt Son and Heir's Death, is Treaſon. So alſo, If a Man doth violate the King's Companion, or his eldeſt Daughter unmarried, or the Wife of his eldeſt Son and Heir. Or, K

If

If a Man levy War againſt the King in his Realm. **Or,** Adhere to the King's Enemies. **Or,** Aid or comfort them in the Realm, or elſewhere; and thereof be provably attainted of open Deed, by People of their Condition. **Alſo,** If a Man counterfeit the Great or Privy Seal. **Or,** His Money. **Or,** Bring falſe Money into this Realm, counterfeit to the Money of *England*; as the Money call'd *Luſhburgh*, or other, like to the Money of *England*, knowing the ſame to be falſe, in Diſceit of the King and his People. **So alſo,** The Killing of the Chancellor, Treaſurer, or the Juſtices of one Bench or the other, Juſtices in Eyre, or of Aſſize; and all other Juſtices aſſigned to hear and determine, being doing their Offices.

A **Alſo,** In the Caſes above, that ought to be Treaſon, which extends to the King, and his Royal Majeſty: And of theſe Treaſons the Forfeiture belongs to the King.

To whom the Forfeiture.

B **Alſo,** there is another Treaſon, where a Servant killeth his Maſter, or a Wife her Huſband; and of ſuch, the Forfeiture ſhall be to the Lord of the Fee.

Petit Treaſon.

To whom the Forfeiture.

C **That** if any other Caſe ſuppoſed Treaſon, which is not above ſpecified doth happen, the Court ſhall tarry without giving any Judgment of the Treaſon till the next Parliament, whether it ought to be adjudged Treaſon or Felony.

What to do in Caſe of new Treaſons.

D **That** if any Man within the Realm ride armed with Men of Arms, againſt any other, to kill, or rob, or keep him till he hath made Fine for his Deliverance, this ſhall be only Felony, and not Treaſon.

What ſhall be Felony, and not Treaſon.

E **There** is a Salvo to the King of the *Annum, Diem & Vaſtum*, and the Forfeitures of the Goods and Chattels.

F **How** Trials of Treaſons, both againſt Peers and Commoners ſhall be, and what Evidence there muſt be. See the Statute at large. *7 W.* 3. *cap.* 3. As to Peers ſee the Duke of *Buckingham*'s Caſe 13 *H.* 8. *fol.* 12. *a.*

How Trials for Treaſon ſhall be.

7 W. 3. cap. 3.

G **There** cannot be a Diſcharge of an Attainder of Treaſon, but by the King's expreſs Pardon: And no Treaſon can be pardoned but by expreſs Words, mentioning it. *Cro. Jac.* 495.

Nothing but a Pardon can diſcharge an Attainder of Treaſon: No Treaſon can be pardoned, but by expreſs Words.

H **It** is ſaid in *Cro. Car.* 2. 125. That no Words will be Treaſon, unleſs by ſome particular Statute: For there is no Treaſon at this Day, but by the Statute of 25 *Ed.* 3. *Stat.* 5. *cap.* 2. for imagining the Death of the King, *&c.* and the Indictment muſt be framed upon one of the Points in that Statute.

Words are not Treaſon.

No Treaſon at this Day but by 25 Ed 3. Stat. 5. cap. 2.

I **But** ſee *Cro. Car.* 332. *pl.* 18. and 333, where a Prieſt was indicted, and found guilty of Treaſon, for ſaying (beyond Sea) *I will kill the King if I may come at him, becauſe he is an Heretick:* And it

The Words, *I will kill the King if I may come at him, becauſe he is an Heretick*, adjudged Treaſon.

25 **Ed.** 3. **Stat.** 5. **cap.** 2.

was proved, That he came into *England* for the ſame Purpoſe. This was held High Treaſon by the Courſe of the Common Law, and within the Words of the 25 *Ed.* 3. *Stat.* 5. *cap.* 2.

Treaſon to clip, waſh, and file Money. 3 **H.** 5. **cap.** 6.

A **It** ſhall be Treaſon to clip, waſh, and file Money. 3 *H.* 5. *cap.* 6.

How Treaſon committed beyond Sea ſhall be tried.

5 & 6 **Ed.** 6. **cap.** 3. **ſect.** 2.

35 **H.** 8. **cap.** 2. **ſect.** 1.

B **Treaſon** committed beyond Sea by any of the King's Subjects ſhall be inquired of and preſented by the Oaths of twelve Men, in what County the King pleaſes to appoint by Commiſſion under the Great Seal; and upon every Indictment and Preſentment found and certified unto the King's Bench, the ſame Proceſs ſhall go as if committed in *England*.

Proceſs to the Outlawry ſhall go, though the Perſon be beyond Sea; but if he, within a Year after the Outlawry, renders himſelf to the Chief Juſtice, he ſhall be admitted to traverſe the Indictment.

C **That** Proceſs to the Outlawry ſhall go out, tho' the Perſon be beyond Sea; and that if the Party outlawed ſhall, within one Year next after the Outlawry pronounc'd, yield himſelf to the Chief Juſtice of *England*, and offer to traverſe the Indictment, he ſhall be received to traverſe it; and if found Not guilty, ſhall be diſcharged of the Outlawry, and all Forfeitures by Reaſon thereof. *Sect.* 3, 4.

Where executed.

D **One** attainted thereof and executed in *Middleſex*, tho' the Facts laid in *Eſſex*. *Mod. Caſes in Law and Equity* 94.

Overt Act.

E **An** Intention to levy War is an Overt Act to kill the King. *Ibid.* 92.

Concluſion.

F **Indictment** for Treaſon muſt conclude *contra ligeantiæ ſuæ debitum*. *Carthew* 317. *Salk.* 630.

Judgment ill.

G **Attainder** of Treaſon reverſed, the Words *ipſo vivente comburentur* being left out of the Judgment. *Carthew* 349, 632.

Allocatus.

H **Attainder** of Treaſon revers'd for want of *Allocatus* before Judgment. *Salk.* 630.

Amendment.

I **Record** of Judgment therein refuſed to be amended by the Minutes of the Court of *Old Baily*. *Ibid.* 630.

Intendment.

K **Indictments** of Treaſon, *&c.* can't be ſupplied by Intendment. *Salk.* 631. *Vide* 375.

Copy of Indictment.

L **Copy** of Indictment therein not granted after pleading. *Salk.* 634, 153.

Concluſion.

M **Indictment** of a Subject *contra ligeantiæ ſuæ debitum* is well, *ſans naturalis, &c.* *Salk.* 633.

Alien.

N *Aliter* where an Alien is indicted, if *naturalis, &c.* be therein. *Ibid.*

Overt Act, how to be laid.

O **Indictment** for compaſſing the King's Death, the Treaſon being firſt laid, the Overt Act need not be laid *proditorie*. *Ibid.*

Aliter

A *Aliter* where the Treaſon conſiſts in ſuch Act. *Salk.* 633.

B **Words** of Perſwaſion, or of Conſultation, only an Overt Act of Treaſon in compaſſing the King's Death. *Ibid.* 631.

What an Overt Act.

C **Indictment** for levying War, or adhering to the King's Enemies in general, *ſans*, ſhewing particular Inſtances, not good. *Ibid.* 634.

Indictment not good.

D **Joining** with Rebel Subjects of the King's Ally, fighting under Command of an Enemy Prince, is Treaſon, *&c.* *Ibid.* 635.

What Treaſon.

E **Altho'** ſuch fighting be directly (and only) againſt ſuch Ally, for 'tis adhering to the King's Enemies. *Ibid.*

F **Cruiſing** is an Overt Act of adhering, *&c.* and ſo is liſting and marching. *Ibid.*

What an Overt Act.

G **And** there may be a levying War without actual fighting. *Ibid.*

H **In** what Caſes the Judgment in Treaſon may be arreſted or not. *Comberb.* 5, 6, 365.

Judgment.

I **An** Outlawry for Treaſon ought to be reverſed if the Party comes in within the Year. *Ibid.* 298.

Outlawry.

K **See** one withdrew his Plea of Not Guilty, and confeſſed the Fact, and after four Day's Reſpite, Judgment againſt him. *Ibid.* 364.

Withdrawing Plea.

Treſpaſs.

See { **Battery. Continuando. Declarations.** } { **Juſtification. Pleas.** }

L **Of Writs of Treſpaſs there are two Sorts, viz. The one Vicontiel, directed to the Sheriff, and is not returnable, but is to be determined in the County; which Writ hath not the Words Vi & Armis in it; the other is to be ſued in the King's Bench, Common Bench, &c. and hath always the Words Vi & Armis in it.**

Treſpaſs, what.

Treſpaſs *Vi & armis* lies for him who is diſturbed in his Poſſeſſion.

A **An** Action of Treſpaſs *Vi & armis*, doth lie for him that hath the Poſſeſſion of Goods, or of a Houſe or Lands, if he be diſturbed in his Poſſeſſion: *Mich.* 22 *Car. B. R.* For the Diſturbance, beſides the private Injury done unto him thereby, is alſo a Breach of the publick Peace.

For ſeiſing a Felon's Goods before Conviction. *Stat.* 1 *R.* 3.

B **By** Stat. 1 *R.* 3. *cap.* 3. Treſpaſs lies for ſeizing the Goods of a Felon before Conviction. *Raym.* 414.

For taking Goods in Execution after Rule of Court to vacate the Judgment.

C **After** a Rule of Court to vacate the Judgment, Treſpaſs lies againſt him who took the Goods in Execution. *Ibid.* 73.

Accord executed in Part, no Plea to an Action of Treſpaſs.

D **Accord**, though executed in Part, is no good Plea to an Action of Treſpaſs and Aſſault. *Ibid.* 203.

It lies for reſcuing of Goods taken in Execution.

E **If** Goods be taken by the Sheriff in Execution, and the Goods be reſcued out of his Hands, an Action of Treſpaſs lies againſt him that did reſcue the Goods: *Hill.* 22 *Car. B. R. viz.* By the Sheriff, or by the Party, at whoſe Suit they were taken; and the Party may be indicted for a Reſcous alſo, at the Suit of the King, for the diſturbing of the Peace, and hindering the Execution of the Law, to the Prejudice of his People, and the Government eſtabliſhed.

One Action may be brought for a Treſpaſs in Lands that lie in ſeveral Towns.

F **One** Action of Treſpaſs may be brought for a Treſpaſs committed in Lands which lie in ſeveral Towns or Vills: *Paſch.* 23 *Car. B. R.* So that thoſe Vills do lie in one and the ſame County, for elſe they cannot receive one Trial, in reſpect they being local Cauſes of Action, the *Venue* muſt come from the ſeveral Counties where the Treſpaſſes were done.

It lies for taking away of Tithes after they are ſet out.

G **An** Action of Treſpaſs doth lie for a Parſon againſt him that doth take away his Tithes after they are ſet forth: *Paſch.* 23 *Car. B. R.* For after they are ſet forth, the Parſon hath a Property in Law in them, although the Parſon never had an actual Poſſeſſion of them; but if they were never ſet forth, he cannot have an Action of Treſpaſs for them, but may bring his Action upon the Statute of 2 *Ed.* 6. to recover the treble Value of them againſt the Owner of the Land for the not ſetting of them out.

The Father cannot have it for beating his Son, unleſs ſaid *per quod, &c.*

H **That** the Father cannot have an Action of Treſpaſs for beating his Son, if it be not ſaid *per quod ſervitium amiſit. Ibid.* 259.

In what Caſe the Court will order the Plaintiff to join ſeveral Actions of Treſpaſs into one.

I **If** divers Actions of Treſpaſs be brought for one and the ſame Cauſe, with an Intent only to vex the Defendant, if the Court be moved in it, and Proof thereof made by Affidavit, the Court will order the

Plaintiff to join all his Actions into one, if it may be conveniently done. *Paſch.* 23 *Car. B. R.* For the Judges of the Law do not favour unjuſt Vexations of the People, under a Pretence of doing Juſtice.

A **If** one do carry another with Force into the Houſe of a third Perſon, he who carries the other by Force into the Houſe, is the Treſpaſſer unto the third Perſon, and not he who is carried thither by Force; and ſo if one do drive my Cattle into the Ground of a third Perſon, he that drives my Cattle into the Ground is the Treſpaſſer, and not I, who am owner of the Cattle: *Mich.* 23 *Car. B. R.* For one ſhall not be made a Treſpaſſer againſt his Will, and the Perſon to whom the Treſpaſs is done is not without Remedy.

Who is the Treſpaſſer when a Man is carried by Force into the Houſe of a third Perſon.

B **If** a Perſon or Goods be reſcued out of the Hands of the Sheriff, which he hath taken in Execution by Virtue of his Office, it is at the Election of the Sheriff to bring an Action upon the Caſe, or an Action of Treſpaſs *Vi & armis,* againſt him that made the Reſcous: *Hill.* 23 *Car. B. R.* For the Sheriff is anſwerable in Law to anſwer the Goods taken in Execution; and it is therefore reaſonable he ſhould have an Action againſt him that reſcued them, to recover the Value of them.

The Sheriff may chuſe to bring either Treſpaſs or Caſe for a Reſcue.

C **If** one bring a meer Action upon the Caſe, he may declare, omitting the Words *Vi & armis*; but if the Action be a bare Action of Treſpaſs, there he muſt declare, That the Treſpaſs was committed *Vi & armis, &c. Mich.* 24 *Car. B. R.* For an Action of Treſpaſs doth imply a Breach of the Peace, and a *Capiatur* is to be entered in the Judgment againſt the Treſpaſſer for his Fine to the King: But in an Action upon the Caſe it is otherwiſe; for there the Judgment is, that the Defendant ſhall pay ſuch Damages as the Plaintiff is damnified by the taking of them, and be *in miſericordia.*

Where the Words *Vi & armis* may be omitted and where not.

D **Treſpaſs** omitting the Value of the Goods, bad upon a general Demurrer. 2 *Lev.* 230.

To omit the Value is ill on a general Demurrer.

E **Upon** a Recovery of Lands in an Action of Treſpaſs and Ejectment, the Plaintiff may afterwards bring an Action of Treſpaſs againſt the Defendant, for the meſne Profits of the Land: So it was held in the Caſe between *Wilmot* and *Holden. Trin.* 1652. *B. S.* The meſne Profits are ſuch Profits of the Land as did grow due betwixt the Time of the Demiſe laid in the Declaration, and the Time of the Recovery; but more he ſhall not recover; for if he be more damnified, it was his own Fault that he brought his Action no ſooner.

When Lands are recover'd in Ejectment, the Plaintiff may bring Treſpaſs againſt the Defendant for the meſne Profits.

F **In** all Treſpaſſes there ought to be a voluntary Act, and alſo a Damage; otherwiſe it lies not. *Latch.* 13.

In all Treſpaſſes there ought to be a voluntary Act, and alſo a Damage.

A Treſpaſs laid to be done before it was done, is good. And why.

A **Where** a Treſpaſs is done before the Day mentioned in the Declaration, it is good enough; becauſe being once a Treſpaſs it is always a Treſpaſs. *Cro. Eliz.* 32. *pl.* 8. *Curia.* There muſt be Evidence of a Fact done before the Action brought, the Time is but a Circumſtance of a Thing done. 5 *Mod.* 286, 287.

Treſpaſs lies not for the Father for carrying away any of his Children but his Heir apparent.

B **Treſpaſs** *quod cepit* and *abduxit* lies not for the Father for Taking and Carrying away any of his Children, except for the Taking of a Son or Daughter who is Heir. *Cro. Eliz.* 769. *pl.* 13. 770.

Aſſent before or after the Taking makes the Party a Treſpaſſer *ab initio*: But an Aſſent after, will not do to a Battery.

C **An** Aſſent before or after the Taking of the Goods, makes the Party a Treſpaſſer *ab initio*; but not after, to a Battery formerly done. *Cro. Eliz.* 824. *pl.* 25.

Battery by Baron for beating his Wife, *Per quod conſortium amiſit.*

D **Battery** brought by the Baron for the Battery of his Wife, *Per quod conſortium amiſit. Cro. Jac.* 538. *pl.* 501, 502. See Title **Baron and Feme.**

He that commands a Treſpaſs to be done, is a Principal.

E **He** that commands a Treſpaſs to be done is not an Acceſſory, but a Principal. 5 *Lev.* 124. In Treſpaſſes there are no Acceſſories, all are Principals. *Co. Litt.* 57. *a. b.*

Where the Maſter and Servant are both Treſpaſſers.

F **If** a Man commands his Servant to beat me, and he doth it, he is as well a Treſpaſſer as he which actually beat me. 2 *Roll. Abr. Letter* V. N°. 1, 2.

The Servant who put his Maſter's Cattle in a Stranger's Ground, is the Treſpaſſer, and not his Maſter.

G **If** my Servant puts my Cattle into a Stranger's Ground without my Conſent, and Treſpaſs is brought againſt me, I may plead Not guilty, and give this Matter in Evidence; for I am not guilty, but my Servant is. 2 *Roll. Abr.* 682. *pl.* 4.

How to declare in Treſpaſs upon a *Recordare*, when the Damage is under forty Shillings.

H **How** to declare in an Action of Treſpaſs, removed by *Recordare* out of the County-Court, the Damages being under forty Shillings. See Title **Declaration.**

How to reply, when the Defendant pleads *Liberum Tenementum.*

I **In** Treſpaſs the Defendant pleads *Liberum Tenementum*, the Plaintiff may reply generally; but where a Title is ſhewn, he muſt anſwer it particularly. 4 *Jac.* 2. *B. R.*

How to declare for the taking of Goods at ſeveral Times.

K **In** Treſpaſs for taking of Goods at ſeveral Days, the Plaintiff in his Count ought to ſay, That ſuch a Day *& diverſis aliis diebus & vicibus*, between that Day and ſuch a Day afterwards, the Defendant took the Goods. *Comberb.* 427, 433.

L **Cutting** the Plaintiff's Cloſe and Hunting, laid with a *Continuando*, and held good. *Salk.* 638, 639.

M **Acts** that are done and cannot be repeated, cannot be laid with a *Continuando*, *Salk.* 639. As Treſpaſs and cutting down ſuch a Number of Trees. *Ibid.*

A **But** a general *Continuando* ſhall be applied to what may be continued after a Verdict. *Salk.* 639.

B **The** Plaintiff declares for a Reſcous, *& parcum fregit*, and Judgment againſt him; he brought a Writ of Error, and had the Original certified, which was, That the Defendant *Simul cum A. B.* which ought not to be in the Writ, but in the Count; for this makes it appear that there was another who did the Wrong which is not Party to the Writ, and ſo the Writ deſtroys itſelf: Of which Opinion was the Court, and the Judgment was revers'd. *9 W. 3. B. R.*

In Treſpaſs for *parcum fregit*, the Writ was with a *ſimul cum*, and therefore erroneous.

C **Where** a Meadow is ſet out by Lots to be mowed, this (being by Preſcription) makes an Intereſt in the Party, whoſe Lot is ſet out; ſo that he may bring Treſpaſs, *quare clauſum fregit*, for cutting of his Graſs. *Cro. Eliz.* 421. *pl.* 17.

Ground ſet out by Lot gives an Intereſt to bring a *Clauſum fregit*.

D **In** an Aſſault and Battery the Defendant pleaded, That his Horſe run away from him, and he could not ſtop him: And upon a Demurrer, held to be naught, becauſe he did not acknowledge any Aſſault; ſo that it amounts to but a Not guilty, and he may give it in Evidence: For where-ever a Plea amounts to a Not guilty, it is naught, upon a ſpecial Demurrer. *Paſch. 7 W. 3. B. R.*

Where the Aſſault is not acknowledged, the Plea amounts to but a Not guilty.

Note, The ſpecial Matter muſt be given in Evidence.

E **Treſpaſs** in *Com. Banco* is good, without *Vi & Armis*: Becauſe the Writ is Part of the Count, and the Count ſhall refer to the Writ, and that will make it good. *Lutw.* 1509.

Treſpaſs in *Com. Banco*, good, without *Vi & Armis*.

And why.

F **Aſſault** and Battery in the King's Bench, and there wanted *Vi & Armis*, which being Matter of Subſtance, and not aided by any Statute, Judgment was revers'd. *Cro. Jac.* 443. *pl.* 19. *Ibid.* 526. *pl.* 1.

The want of *Vi & Armis* in Aſſault and Battery, is Error.

G **The** Plaintiff ſays, That *clauſum fregit & accipitrem quer.* he killed, without ſaying what Sort of Hawk, yet good. *Cro. Car.* 18.

Clauſum fregit & accipitrem quer. occidit. See Title **Traverſe.**

H **Where** the Defendant pleads Not guilty to the Aſſault, and juſtifies the Caption and Impriſonment, it is repugnant in itſelf.

It is Repugnant to plead Not guilty to the Aſſault, and juſtify the Caption.

I **In** Treſpaſs the Declaration was, *Piſces ſuos cepit*, without ſaying what the Number or Nature of them was, and therefore naught. 5 *Rep.* 35. *a.* though after a Verdict. *Salk.* 637. *Comberb.* 433, 464.

Piſces ſuos cepit, withont Number, or what Fiſhes.

K **Where** a Man brings Treſpaſs for taking of *piſces ſuos*, or *lepores ſuos*, or the like, the Action will not lie; but if he brings Treſpaſs for Fiſhing in his ſeveral Fiſheries; or for breaking of his Cloſe, and taking of *lepores ſuos*, there it will lie. *March* 49. See *Cro. Car.* 553, 554. See *Poſtea.*

How to bring Treſpaſs for Fiſhing in his ſeveral Fiſheries.

The Quantity and Quality of the Goods muſt be expreſs'd.

A **Treſpaſs** for taking of Goods, where the Quantity and Quality of them is not expreſſed, it is naught. *Lutw.* 1384. Or Value of them. 2 *Lev.* 230.

Treſpaſs for four *Pullos*, and ſays not *Equinos*, and good, by Defendant's Plea.

B **Treſpaſs** for four *Pullos*, without an *Anglicè*, Colts, or ſaying *Pullos Equinos*, yet held good; for that the Defendant had juſtified the taking of four Colts, which made the Plaintiff's Declaration good. *Lutw.* 1492.

Where Treſpaſs lies for the Maſter againſt the Servant.

C **Treſpaſs** *Vi & Armis* lies by a Maſter againſt a Servant, for carrying away of his Goods. 1 *Leon.* 87. Caſe 110.

Where the Party purſues not his Authority, he is a Treſpaſſer.

D **Where** a ſpecial Authority is given, and the Perſon purſues not his Authority, he is a Treſpaſſer *ab initio*. *Lutw.* 140.

Where a Treſpaſſer *ab initio*, and where not.

E **Where** the Entry, Authority, or Licence, is given by Law, (as into a Tavern) and he who enters is a Miſfeazor, he is a Treſpaſſer *ab initio:* But where it is given by the Party, and he is a Miſfeazor, he ſhall be puniſhed for his Maleſeazance, but not be a Treſpaſſer *ab initio*. 8 *Rep.* 146. *a.*

Non-Feaſance cannot make a Treſpaſſer.

F **Non-Feaſance** cannot make a Man, who hath Authority by Law to enter, a Treſpaſſer, *viz.* not paying for Wine at a Tavern. *Ibid.* 146, 147.

He that commands a Treſpaſs, is a Principal.

G **He** that commands a Treſpaſs to be done, is not an Acceſſary, but a Principal. 1 *Lev.* 124.

How to juſtify the killing of the Plaintiff's Dog.

H **In** Treſpaſs the Defendant juſtifies the killing of the Plaintiff's Dog in Defence of his own: But becauſe he had not ſaid that he could not otherwiſe ſave his Dog, it was held naught. 1 *Lev.* 218.

Treſpaſs for taking away Hay, and ſays not his Hay, it is naught.

I **In** Treſpaſs for entering of his Cloſe, and taking of a Load of Hay, and ſays not his Hay, and naught. 2 *Lev.* 156.

Treſpaſs for taking of two Cows, and ſays not, *ſuos*, and held to be naught.

K **Treſpaſs** for taking of two Cows upon his Land at *D.* and alſo for taking of two Horſes of the Plaintiff's Goods from the ſaid *D.* and doth not ſay the Cows were his; ſo that laying a *Venue* for the taking of the two Cows, cloſes up the Sentence, and interrupts its being cloſed with the ſecond Sentence or Deſcription which follows; and ſo they may be the Cattle of a Stranger: And therefore not good. *Mod. Caſes* 14, 15.

Where the Defendant claims Property, he muſt plead *non cul. Contra* in Replevin.

L **In** Treſpaſs where the Defendant claims Property, he muſt plead Not guilty. *Contra* in Replevin. 2 *Lev.* 92.

A **The** Statute of 8 *Eliz. cap.* 15. which gives a Reward for the killing of Vermin, ſays it muſt be with Conſent, and reaſonable Engines: Therefore there being an ordinary Courſe, (*viz.* Hunting) to kill the Badger, the digging for him was unlawful, and Treſpaſs lies for it. *Cro. Jac.* 321. *pl.* 3.

It is lawful to hunt and kill Vermin, as Badgers, Foxes, *&c.* 8 Eliz. cap. 15. But not to dig them out of the Ground when they are earth'd.

B **Treſpaſs** *quare clauſum fregit, necnon* that the Defendant being an inferior Tradeſman, *viz.* a Clothier, *adtunc & ibidem in clauſo præd' venatus fuit & alia enormia, &c. & contra formam Statuti, &c. Note,* This Action was brought upon the Statute of 4 *&* 5 *W. & M. cap.* 23. and the Plaintiff, after a Verdict, had Judgment and his Coſts. 5 *Mod.* 307, 308.

Treſpaſs lies upon the Statute againſt an inferior Tradeſman for Hunting upon the Plaintiff's Ground.

4 & 5 W. & M. cap. 23. ſect. 1.

C *Quod cum* in Battery is naught, it being but Recital, and no direct Affirmation. 2 *Lev.* 206. *Cro. Eliz.* 507. *pl.* 32.

Quod cum in Battery is naught.

D **In** Treſpaſs the Defendant pleads, that a Gate was ſo put in his Way that he could not paſs with his Cattle, whereupon he pulled it down: And held good, though he had not ſaid that it was locked or nailed ſo that he could not paſs; becauſe it ſhall be intended to be locked or nailed. 3 *Lev.* 92. See *Cro. Car.* 184, 185.

Where a Juſtification is good for pulling down a Gate in his Way.

E **Treſpaſs** with a *Continuando* of divers Things, and of Part no *Continuando* could be, yet it ſhall be good for thoſe that be, it being *Continuando Tranſgreſſionem præd'* without ſaying thoſe that could not be. 3 *Lev.* 93, 94.

A *Continuando* for ſeveral Things, whereof there could be no *Continuando* of Part.

F **Battery,** Impriſonment, and Taking of Goods, againſt three. One of them commits the Battery, another the Impriſonment, and the third takes the Goods all at one Time; all are guilty of the whole and all ſhall be charged with all the Damages: But if ſeveral Damages are given, the Plaintiff can have but one of them, but may make his Election *de melioribus dampnis. Ibid.* 324.

Three ſeveral Treſpaſſes by three ſeveral Perſons at one Time, all are guilty of the whole. But four ſeveral Damages are given, the Plaintiff can have but one of them.

G **An** Action of Treſpaſs was brought for Fiſhing in *Libera Piſcaria,* and the Court upon Debate ordered the Declaration to be amended, and made in *Separali Piſcaria. Paſch.* 7 *W.* 3. See the Caſe of *Peers* and *Lucy.* 4 *Mod.* 355.

Treſpaſs for Fiſhing, muſt be in *Separali Piſcaria,* not *Libera Piſcaria.*

H **For** Fiſhing *in ſeparali piſcaria ſua,* and taking of *piſces ſuos,* which was inſiſted upon to be naught; for he hath not any Property in the Fiſh till he takes them. *Curia contra:* It being ſaid that they were *in ſeparalia piſcaria ſua,* they may be well ſaid *piſces ſuos,* for none other may take them there.

For Fiſhing *in ſeparali piſcaria ſua,* and taking *piſces ſuos,* and good.

Where it may be ſaid *ſuos.*

So for Deer in a Park, or Conies in a Warren, it may be ſaid *ſuos*; but not if out of Park or Warren. So alſo of Doves.

A **So** for Deer in a Park, or Conies in a Warren, or Doves in a Dove-houſe; but for Deer or Conies, if they are not in a Park or Warren, he cannot ſay *ſuos*, unleſs he adds that they were Domeſtick. *Cro. Car.* 553. *pl.* 9, 554. *Salk.* 637.

An Act for Puniſhment of Wood Cutters and Stealers.

15 **Car.** 2. **cap.** 2.

43 **Eliz.** **cap.** 7.

See the Puniſhment in the Acts.

B **See** a Statute made 15 *Car* 2. *cap.* 2. intituled, *An Act for the Puniſhment of unlawful Cutting or Stealing, or Spoiling of Wood, and Under-Woods, and Deſtroyers of young Timber Trees. Note,* The Statute of 43 *Eliz. cap.* 7. goes further, and ſays, That if they ſhall cut, or unlawfully carry away any Corn growing, or rob any Orchards or Gardens, or break or cut any Hedge, Pales, Rails, or Fence, or dig up any Fruit-Trees in any Orchard, Garden, or elſe where, to the Intent to take and carry them away. *Note,* The Puniſhment for the Breach of this Act muſt be upon a Proſecution within ſix Weeks after the Offence committed.

Treble Damages to wound Cattle, or deſtroy Plantations of Trees.

22 **&** 23 **Car.** 2. **cap.** 7.

See the Statute for another Sort of Trial.

C **That** if any Perſon ſhall maliciouſly, unlawfully, and willingly maim, wound, or hurt any Horſes, Sheep, or other Cattle, whereby they ſhall not be killed; or ſhall deſtroy any Plantation of Trees, or throw down Incloſures, he ſhall forfeit treble Damages in an Action of Treſpaſs. 22 *&* 23 *Car.* 2. *cap.* 7. See Title **Felony.**

How to juſtify for Tithe.

D **In** Treſpaſs for five Loads of Hay taken and carried away, how to juſtify for Tithes. 3 *Lev.* 228.

Quod cum in Treſpaſs is naught.

But Recital.

E **Where** in an Action of Treſpaſs only, the Plaintiff ſays *quod cum* in his Declaration, it is naught; for *quod cum* is only a Recital, and no direct Affirmation of the Fact committed, as *quod* alone is.

Treſpaſſes of ſeveral Natures cannot be laid together.

F **Treſpaſſes** of ſeveral Natures cannot be laid together in one Action. *Mich.* 24 *Car. B. R.* becauſe they cannot be jointly tried.

Treſpaſs for Meſne Profits after a Recovery in Ejectment.

How to be brought.

G **Where** there is a Recovery in Ejectment, and an Action for the meſne Profits is brought in the Name of the Plaintiff in the Ejectment; there the Plaintiff needs in this Caſe only to give the Recovery in the Ejectment in Evidence, and to prove the Lands to be the ſame Lands recovered; But if the Action of Treſpaſs for the meſne Profits be brought in the Leſſor's Name, (as it may be) there the Defendant may give his Title in Evidence, if he have any, and put the Plaintiff to try the Matter over again.

Treſpaſs for taking *Blada*, and ſays not *ſua*.

H **Treſpaſs** *quare clauſum fregit & blada ibidem creſcen'* (without ſaying *ſua*) *cepit & aſportavit*: This is good after Verdict, but naught upon a Demurrer or Judgment by Default, for not ſaying *ſua*. 7 *Rep.* 18. *a.* See *Cro. Jac.* 46. *pl.* 15.

A **Treſpaſs** *quare clauſum fregit*, and it appeared, That the Plaintiff had but the Crop and Veſture of the Land, as Lot-acres, every third or fourth Year: And yet adjudg'd, That it lies.

It lies for him who hath the Crop every third Year.

B **So** for him that hath *herbagium terræ*.

So *pro herbagia terræ*.

So for him that hath *veſturam terræ*.

So *pro veſtura terræ*.

So for him that hath *paſturam terræ*.

So *pro paſtura terræ*.

So for the Profits of the Land by Outlawry. *Moore*, *Caſe* 453.

So for the Profits by Outlawry.

C **In** an Action of Treſpaſs, unleſs the Jury give forty Shillings Damages, the Plaintiff ſhall have no more Coſts than Damages, unleſs the Battery was well proved, or the Title came in Queſtion, and are ſo certified on the Back of the *Poſtea* by the Judge who tried the Cauſe; or that the Declaration mentions the carrying away of ſomething of the Plaintiff's, and that the ſame is found to be ſo in the Verdict. *Note*, This is by the Statute of 22 & 23 *Car*. 2. *cap*. 9. *Sect*. 149.

If the Jury give not forty Shillings, no more Coſts than Damages.

22 & 23 **Car.** 2. **cap.** 9. **ſect.** 149.

D **See** a Caſe upon this Statute argued on both Sides, but not determined. 5 *Mod*. 74.

A Caſe upon the Statute of 22 & 23 **Car.** 2. **cap.** 9.

E **The** Defendant in Treſpaſs preſcribes to drive the Common to ſee if it were over-charged, and for taking of a Diſtreſs; and held good, without a Preſcription to diſtrain. 2 *Lev*. 87.

Defendant preſcribes to drive a Common, and for taking of a Diſtreſs.

F **Treſpaſs** lies not againſt him who comes in by Title under a Diſſeiſor. 11 *Co*. 51. *a*. *Keilw*. 1. *b*. See Title **Diſſeiſor**.

Lies not againſt him who comes in by Title under a Diſſeiſor.

G **Leſſee** for Life of an Houſe and Paſture dies, his Executor ſuffers his Cattle to go there for ſix Days after his Death, and then removed them, averring, that in the ſix Days he could not get any other Land to put his Cattle in; and the Court thought it a convenient Time, and allowable by Law. *Cro*. *Jac*. 204. *pl*. 6.

The Law allows a convenient Time to the Executor of Tenant for Life to remove the Goods.

H **No** Action of Treſpaſs will lie for the taking away of a Man generally, (*viz*. his own Negro Slave) but an Action of Treſpaſs for taking away of his Servant, *per quod ſervitium amiſit*, will lie. 5 *Mod*. 191. *Salk*. 666.

It will not lie for taking away of his Negro; no otherwiſe than his Servant, *per quod ſervitium amiſit*.

I **Treſpaſs** for taking away ſo much of the Plaintiff's Money: The Defendant pleads that he was indicted at the Plaintiff's Proſecution, and was found guilty as Acceſſory: But adjudged, That the Action lies. See the Caſe, *Latch* 144, 145, 146.

Treſpaſs lies againſt a Thief for taking of Money, though found guilty of Felony.

K **Treſpaſs** for chaſing of his Ewes great with Lamb, ſo as they loſt their Lambs: The Defendant juſtifies the taking Damage-feaſant, and driving of them to the Pound, and held no Plea; for though

Treſpaſs lies for abuſing of Cattle in the driving of them to the Pound.

he

A he may take them, yet he muſt not drive them ſo as to hurt them. 3 *Leon*. *Caſe* 37.

Treſpaſs, or Trover, may be brought for the ſame Thing.

B **A Man** may bring Treſpaſs, or Trover, which he pleaſes. *Cro*. *Jac*. 50. *pl*. 21.

Who is a Treſpaſſor.

C **If** *A*. requeſts *B*. to take Goods, *&c*. tho' *B*. does it, yet *A*. is a Treſpaſſor. *Comber*. 434.

Officer.

D **An** Officer ſhall not be made a Treſpaſſor by Relation. *Ibid*. 124.

Juſtifies by Officer.

E **In** Treſpaſs an Officer juſtifies by Proceſs of inferior Court with a *Taliter proceſſum*. *Ibid*.

A Diverſity.

F **Note**, a Diverſity in a Juſtification between an Officer and one who ſets the Officer at work. *Ibid*. 434, 435.

Molliter manus.

G **A Battery** in a Church cannot be juſtified by a *Molliter manus*, except by the Church-wardens. *Ibid*. 17.

De injuria propria.

H **In** Aſſault and Battery, if the Defendant juſtifies and the Plaintiff replies *De injuria ſua propria*, he cannot give in Evidence a Battery at another Time. *Ibid*. 50.

Where there needs no Traverſe.

I **In** Aſſault and Battery, if the Defendant pleads *Son Aſſault demeſne*, the Plaintiff may ſhew it was a juſtifiable Aſſault; and if it be pleaded *Tempore quo*, there needs no Traverſe or Averment. *Ibid*. 227.

Againſt a Juſtice of Peace.

K **Where** a Juſtice of Peace commits one as the reputed Father of a Baſtard, which after appears to be no Baſtard, an Action of Treſpaſs and Impriſonment lies againſt the Juſtice. *Ibid*. 482.

Outlawry.

L **The** Perſon at whoſe Suit one is outlaw'd cannot juſtify the taking of Goods by a *Levari Fac*. without ſhewing of the Outlawry, or the Command of the Sheriffs. *Ibid*. 469, 470.

Title.

M **In** Treſpaſs for diverting a Water-Courſe, the Plaintiff need not ſhew Title thereto. *Ibid*. 41, 43.

Damage feaſant.

Vide an Action for taking a Horſe Damage feaſant. *Ibid*. 60.

For Hunting.

N **Treſpaſs** for breaking his Cloſe, and hunting and killing ſeveral (of his) Conies therein, held good. *Ibid*. 458.

For taking Hay.

O *Quære*, If it lies for carrying away ſo many *Carrectat Fæne*. *Ibid*. 241.

By Will after the death of her Huſband.

P **Treſpaſs** lies for a Feme Inheritrix, after her Huſband's Death, againſt a Leſſee for Years, for cutting down Trees (excepted in the Leaſe) in the Huſband's Life, who was not entitled to be Tenant by Courteſy. *Ibid*. 453.

Q *Aliter*, If the Huſband had been entitled to be Tenant by Courteſy. *Ibid*.

A **And** though the Trees are become Dotards, yet that does not diveſt the Property of the Leſſor. *Comber*. 453.

Trees.

B **Treſpaſs** *Quare clauſum fregit pedibus ambulando, &c.* and in *clauſo præd' venatus fuit* (the Defendant being an inferior Artificer) *contra formam Statuti*, the ill Concluſion vitiates the Declaration. *Ibid.* 420, 421.

Concluſion, ill.

C **In** Treſpaſs the Concluſion *contra pacem* is Matter of Subſtance. *Ibid.* 168.

Contra pacem.

D **Where** one declare in Treſpaſs with a *ſimul cum*, and where not. *Ibid.* 260.

Simul cum.

E **Where** Corn, *&c.* are taken away on ſeveral Days, 'tis beſt to lay it taken, *&c. tali die & diverſis diebus & vicibus inter (talem) diem & (talem) diem. Ibid.* 427.

Treſpaſs at ſeveral Days.

F **See** a Verdict *pro Def'* on an immaterial Iſſue in Treſpaſs ſet aſide, and Judgment *pro quer'* entred on the Defendant's Confeſſion of the Treſpaſs in his Plea. *Ibid.* 379, 380.

Verdict for Defendant ſet aſide.

G **Note,** a Judgment, *&c.* againſt one Treſpaſſor, is pleadable in Bar by the others. *Ibid.* 144, 145.

Judgment pleadable.

H **Treſpaſs** lies for the Meſne Profits pending a Writ of Error in *Cam. Sca. Ibid.* 455, 456.

Meſne Profits.

I **Treſpaſs** by Huſband and Wife laid *ad damnum ipſorum*, is ill. *Ibid.* 184.

By Huſband and Wife.

K **Treſpaſs** *Quare claus' fregit, &c. & liberam piſcar' ſuam piſcat' eſt, & centum, &c.* moved in Arreſt of Judgment, that Treſpaſs does not lie, but Caſe; but adjudged for the Plaintiff, for *Libera Piſcaria* implies an Intereſt, and is all one with *Separalis Piſcaria*, and he might plead to an Action of Treſpaſs for Fiſhing in *Libera Piſcaria ſua*, that it is his Frankteneinent. *Skinner* 342. *Carth.* 285, 286.

In *Libera Piſcaria*, good.

L **In** Treſpaſs for Fiſhing in his free Fiſhery: The Jury find ſpecially that the Place where is Parcel of the Manor of *D.* and that the Plaintiff is ſeiſed of this Manor in Fee, and conclude that they find for the Plaintiff if he could have an Action of Treſpaſs for Fiſhing in his Free Fiſhery within his own Land: And adjudged, That the Plaintiff may have ſuch a Fiſhery; for though divers may have Liberty to Fiſh there beſides himſelf, this is *Libera Piſcaria* in his Manor. *Skinner* 677.

The like.

M **Where** the Declaration is good in this Action for killing Conies and taking Fiſh, without ſaying *Suos*. 3 *Salk.* 290, 291.

Suos omitted.

N **Treſpaſs** *Vi & Armis* cannot be tried in an inferior Court. *Ibid.*

Intervene.

Another Action depending.

A **Treſpaſs** againſt two, who pleaded in Abatement another Action of Treſpaſs pending againſt one of them, and good. *Carthew 96.*

Damages under 40 *s.*

B **Treſpaſs** *Vi & Armis* may be brought in *B. R.* and the Damages laid under 40 *s.* but not Treſpaſs generally. *Ibid.* 108.

Converſion.

C **See** an Action of Treſpaſs laid with a Converſion. *Mod. Caſes in Law and Equity* 217.

Vi & Armis.

D **Where** the original Act was a Wrong in itſelf, there Treſpaſs *Vi & Armis* lies. *Ibid.* 275.

Where on the Caſe.

E **But** where an Injury is in Conſequence of a lawful Act it muſt be Treſpaſs on the Caſe. *Ibid.* 272.

Where to be laid and proceed.

F **In** Treſpaſs *Quare clauſum fregit*, and all local Actions, the Plaintiff cannot prove a Treſpaſs any where but where 'tis laid in the Declaration; nor lay it any where but where done. *Ibid.* 322.

Ad dampnum ipſorum, ill.

G **Treſpaſs** for entring the Houſe of *A.* and taking the Goods of *B. ad dampnum ipſorum:* After a Verdict and entire Damages, the Judgment was arreſted. *Ibid.* 370. *vide* 165.

Juſtification in Part, ill.

H **Treſpaſs** on the Caſe for deſtroying the Plaintiff's Common in ſix Acres; a Juſtification in three Acres only, is ill. *Ibid.* 120.

Where the Plaintiff can't have Judgment.

I **Treſpaſs** againſt two for taking Cattle and converting them; one ſuffers Judgment by Default, the other juſtifies by Diſtreſs for Rent due to him, who ſuffer'd Judgment; and to the Converſion pleaded the Plaintiff's Licence to ſell, which is found for him; the Plaintiff now cannot have any Benefit of the Judgment, for it does not appear he had any Cauſe of Action. *Ibid.* 218.

Contra pacem of the preſent King.

K **And** Treſpaſs laid in a former King's Time, *contra pacem* only of the preſent, is ill on Demurrer; but cured by Verdict. *Salk.* 640.

Vi & Armis.

L **Alſo** Declaration in Treſpaſs without *Vi & Armis* held ill on general Demurrer. *Ibid.* 636.

Quare Vi & Armis.

M **But** *Quare Vi & Armis* is ill, for *quare* is not poſitive, but only Interrogatory. *Ibid.*

Property not appearing.

N **Treſpaſs** *Quare duos equos apud* D. *&c. & Triticum de bonis propr' ipſius* A. *cepit*, held ill, becauſe the Property of the Horſes not ſhewn, and the conditional Damages entire. *Ibid.* 640.

Property.

O **And** Plea of taking a Diſtreſs for Rent does not confeſs Property. *Ibid.*

Number not ſhewn.

P **Treſpaſs** for entring his Houſe and taking ſeveral *Claves*, *&c.* good, *ſans* ſhewing the Number. *Ibid.* 645.

A **Treſpaſs** for entring the Plaintiff's Houſe and aſſaulting, *&c.* his Servants; the Aſſault, *&c.* may be by way of Aggravation of Damages. *Salk.* 642. Aggravation.

B **Where** Matters may be laid as Aggravation, for which alone Treſpaſs lies not. *Vide Salk.* 119. Aggravation.

C **Diſturbing** one in the Uſe of his Franchiſe is a Treſpaſs. *Ibid.* 594. What is a Treſpaſs.

D **See** where Treſpaſs brought againſt the Sheriff's Officer for hanging a Man in *privato ſuo ſolo. Ibid.* 648. Againſt Sheriff's Officer.

E *Son Aſſault Demeſne* is a good Plea in Mayheme where the firſt Aſſault was violent. *Ibid.* 642. *Son Aſſault.*

F **Where** in entring *A*'s Cloſe there is only Force in Law; *A.* can't lay Hands on the Treſpaſſor before a Requeſt to depart, *aliter*, where there is actual Force. *Ibid.* 641. *Molliter manus.*

G **Taking** Cattle from *H.* is a taking from his Perſon. *Ibid.* *Averia cepit.*

H **Where** the Treſpaſs is tranſitory the Plaintiff can't pretend a Right to the Place. *Ibid.* 643. Tranſitory.

I *Ergo*, in ſuch Caſe the Defendant may juſtify by Poſſeſſion only. *Ibid.* Juſtify.

K **Note**, a Juſtification muſt confeſs the Treſpaſs. (*Vide* Juſtification). *Ibid.* 637, 638. How.

L **In** Treſpaſs, where a Traverſe goes to the Matter, all before is Inducement and waved, *aliter*, if to Time only. *Ibid.* 642. Traverſe.

M **Treſpaſs** by Leſſee of a Copyholder for Life, for cutting down, *&c.* by the Lord, held maintainable in *B. R.* and affirmed in *Cam. Scac.* but revers'd in the Houſe of Lords. *Ibid.* 638. By Copyholder.

N **Treſpaſs** *Quare Captivum ſuum cepit*, for taking a Negroe, whether it lies. *Ibid.* 666. *Carth.* 396. For a Negroe.

Trial, and Proceedings to it.

See **Baſtardy.**

Several Manners of Trials.

A **There are many Manners of Trials, as of Matters of Fact, and thoſe are by Juries; of Matters of Law, and thoſe are by the Court; and of Matters of Record, and thoſe are by the Records themſelves; ſome by the Biſhop's Certificate; ſome by Inſpection,** &c.

Trial at Bar ought not to be the ſame Term Defendant puts in his Plea.

B **No** Trial ought to be had at the Bar the ſame Term that the Defendant's Plea is put in, but the Term following, by the ordinary Rules of Court: *Hill* 21 *Car. B. R.* But it may be by ſpecial Rule of Court, or in Cauſes depending on the Crown Side, wherein the King is a Party, or by an Iſſue directed out of the Chancery.

How the Inqueſt is taken by Default in Trials at Bar.

C **Upon** a Trial at the Bar, when the Jury is at the Bar, and the Court ready to proceed, and the Panel of the Jurors Names is delivered to the Secondary, he bids the Crier call the Defendant, which he doth; and if his Counſel ſay they appear, then the Secondary bids both Parties in *French*, *Gards voſtre Challenges*, that is, Take heed to your Challenges, and then proceeds to ſwear the Jurors: But if the Defendant doth not appear after thrice calling by the Crier, the Plaintiff's Counſel do pray the Court, That the Inqueſt may be taken by Default: *Trin.* 24 *Car. B. R.* This taking of the Inqueſt by Default, is nothing elſe but the Defendant's loſing his Advantage of challenging of the Jury; but he ſhall defend his Cauſe, and give his Evidence in the ſame Manner as if he had appeared upon his being called.

The Court will not grant a Trial at Bar, unleſs Oath be made, That the Matter is difficult, or of great Value.

D **The** Court will not grant a Trial at the Bar, except there be Oath made, That the Matter to be tried is very difficult, or of great Value: *Mich.* 22 *Car. B. R.* In which Caſes it is fit the Trial ſhould be at the Bar, where Trials are more ſolemn, and where more Time may be ſpent in the Trial than can be at the Aſſizes; but otherwiſe this Court is not to be troubled with Trial of Cauſes, becauſe the Court is thereby hindered in their Proceedings in Matters of Law, which are the proper Buſineſs of the Court, and not Matters of Fact.

A After a Trial hath been in a Cauſe, the Court ought not to order that there ſhall be a new Trial of it, except it doth appear that there was a Surpriſe in the Trial had, or ſome fraudulent Miſcarriage in it; for if they might in any Caſe they pleaſe order a new Trial, this would be for the Court to have an Arbitrary Power, which the Law will not permit: *Mich.* 22 *Car. B. R.* For this would weaken the Common Laws, to the Prejudice of the People.

In what Caſes the Court will order a new Trial.

B A Trial at the Bar ought not to be had for Houſes lying within the City of *London*: *Mich.* 23 *Car. B. R.* For by their Cuſtoms they may hold Plea concerning the Title of Freeholds within the City, and by their Charter they are not to ſerve upon Juries out of the City.

No Trial at Bar for Houſes lying in *London*.

C According to the old Uſe of Practice in this Court, there ought to be but ten Trials at the Bar in *Eaſter* Term: *Paſch.* 23 *Car. B. R.* Becauſe Trials at the Bar are a great Hindrance to other Buſineſſes which are more proper for the Court; yet now the Court doth not think fit to limit them to any Number: For Trials at the Bar are now more deſired than antiently they were; for though they be chargeable, yet are they more ſolemn, and give better Satisfaction to all Parties, and more likely to be final than Trials had at the Aſſizes.

But ten Trials at Bar in *Eaſter* Term.

D A Trial at the Bar may not be had by the Conſent of the Parties without Leave of the Court: *Mich.* 24 *Car. B. R.* For the Court is not bound *ex Officio* to grant a Trial at the Bar, but it is in their Diſcretion to grant it; and the Parties may not preſume to impoſe Things upon the Court which they may do, or not do at their Pleaſure.

No Trial at Bar by Conſent of Parties, without Leave of Court.

E The Day for a Trial at the Bar ought to be entered into the Clerk of the Paper's Book in the Office: *Mich.* 1649. *B. S.* And before it be ſo entered, there ought not to be Notice given of the Trial; for until it be entered in the Clerk of the Paper's Book, the Day cannot be preciſely known.

The Day for a Trial at Bar muſt be entered with the Clerk of the Papers.

F One that is a privileged Perſon in this Court, ought not, by Reaſon of his Privilege only, to have a Trial at the Bar granted unto him, where the Title of Land is in Queſtion; but Trials at the Bar are never granted, unleſs there be Difficulty in the Matter to be tried, or elſe it muſt be of great Value. *Hill.* 1649. *B. S.* 4 *Feb.*

Privilege only no Reaſon for a Trial at Bar.

G A Trial at the Bar ought not to be granted before the Defendant hath pleaded, and Iſſue be joined: *Hill.* 1649. *B. S.* 11 *Feb.* 1656. 12 *Feb.* For before that, the Cauſe is not ready for a Trial, nor doth it appear whether the Parties intend to proceed to a Trial or not, neither can any *Venire facias* iſſue out to ſummon a Jury.

Trial at Bar not granted before Iſſue joined.

Trials at Bar in *Eaſter* Term ought to be a Fortnight before the End of the Term.

A **By** the antient Practice of the Court, all the Trials at the Bar which are had in *Eaſter* Term, ought to be tried a Fortnight before the End of the Term: *Paſch.* 1650. *B. S.* 1 *Maii.* And the Remainder of the Term was to be ſpent in Matters of Law, and in other Buſineſs more proper for the Court than the Trials of Cauſes.

If a Trial be directed out of Chancery, and the Parties will not agree to have the Trial go on, the Court will not compel them.

B **By** *Glyn* Chief Juſtice: *Mich.* 1658. In the Caſe of *Bateman* and others againſt Sir *Job Harvey.* If a Trial at the Bar be directed out of the Chancery, and at the Day the Parties will not agree to have the Trial go on; this Court will not compel them to it, for this Court is not bound to inforce Orders made in Chancery.

If Plaintiff in Ejectment bring his Cauſe to be tried at Bar, he cannot compel the Defendant to confeſs Leaſe, Entry, and Ouſter.

C **If** the Plaintiff in an Action of Treſpaſs and Ejectment do bring his Cauſe to be tried at the Bar, he cannot compel the Defendant to confeſs the Leaſe, Entry and Ouſter; for the Trial at the Bar was not granted in Favour of the Defendant, but of the Plaintiff; but if he doth not confeſs it, then Judgment ſhall be preſently entered up againſt the caſual Ejector; but if the Defendant bring the Cauſe to be tried at the Bar, there he muſt confeſs the Leaſe, Entry, and Ouſter, becauſe the Trial was granted to be at the Bar in his Favour: *Paſch.* 1652. *B. S.* And therefore it ſhall not be in his Power to hinder the Trial for want of ſuch Confeſſion.

If Plaintiff and Defendant conſent that the Jury ſhall have a View, there can be no Trial of the Cauſe that Term.

D **If** at a Trial at the Bar, in a Treſpaſs and Ejectment, the Plaintiff and the Defendant do conſent, that the Jury ſhall have a View of the Lands in Queſtion, there can be no Trial had in the Cauſe that Term, (unleſs it be in *Middleſex*, or ſome adjacent County to *Weſtminſter:*) By *Rolle* Chief Juſtice, 1654. *B. S.* In reſpect of the View to be made, and the Scantineſs of Time afterwards for the Trial.

Trial at Bar uſually granted the Term after it is moved for.

E **It** is not uſual to grant a Trial at the Bar the ſame Term it is moved for, but the next Term after: 1654. *B. S.* Yet ſometimes upon ſpecial Reaſons it is done.

In what Caſes the Court orders the Sheriff to return a *Decem Tales.*

F **If** upon a Trial to be had at the Bar, a full Jury doth not appear to try the Cauſe, or that Part of the Jury are challenged, the Court will order the Sheriff to return a *Decem Tales*, which he uſually doth of Gentlemen in *London* having Eſtates in his County. *Paſch.* 23 *Car. B. R.*

The Court will, in extraordinary Caſes, break their antient Uſage.

G **Although** it is not uſual to have any Trials at Bar but in *Michaelmas* Term, and in *Eaſter* Term, except it be on the Crown Side, yet in extraordinary Caſes it hath been granted on the Pleas Side, to prevent ſome great Inconveniences which would have happen'd by deferring of ſuch Trials. For Example,

ample, in a Caſe of the Lady *Jane Chandois*, in a Treſpaſs and Ejectment, when a Trial upon Motion was granted in *Trinity* Term, 1656. upon a great Debate, wherein *Woodward* an antient Clerk of the Court affirmed, he remembered two Trials in a *Trinity* Term. *Quod nota.*

A **Where** Warning is given of a Trial to the Attorney in the Cauſe, and the Attorney cannot give Notice of this Warning timely enough for his Client to prepare for the Trial, the Court (upon good Cauſe ſhewn them) will not force the Attorney to a Trial, but will give longer Time: *Mich.* 22 *Car. B. R.* Becauſe the Court will not ſurpriſe any Perſon, and ſuch Trials very ſeldom do determine the Buſineſs, but beget more Trouble and Charges to both Parties; and it may be it was neither the Attorney's, nor his Client's Fault, he had not more timely Notice.

Where though Notice be given of Trial, the Court will grant a longer Time.

B **Where** the Defendant in Error took a Record of *Niſi prius*, and proceeded to Trial at the firſt Aſſizes after Iſſue joined, yet good, and a new Trial denied by the Court. 2 *Saund.* 336.

Defendant in Error proceeded to Trial the next Aſſizes after Iſſue join'd, and good.

C **If** a Cauſe to be tried be not entered into the Judges Book, before whom it is to be tried, two Days before the Cauſe is to be tried, the Plaintiff may enter a *Ne recipiatur* in the Judges Book; that it may not be entered after that to be tried at that Time, if the Defendant pleaſe, unleſs it be in a Sitting after the Term; for in Sittings after the Term no *Ne recipiatur* will be admitted: *Hill.* 22 *Car. B. R.* For the Cauſe ought to be entered in due Time, that the Defendant may prepare for the Trial; and he cannot well tell 'till it be entered, whether the Plaintiff will proceed or no.

When a *Ne recipiatur* may be entered in the Judges Book.

Not admitted in Sittings after Term.

D **The** Agitation of a Cauſe in one Court is no Cauſe to put off the Trial of the ſame Cauſe depending in another Court: *Paſch.* 23 *Car. B. R.* For the Proceedings of one Court of Law ought not to claſh with the Proceedings of another Court; but it is not ſo betwixt the Courts at Law and the Chancery, as it is a Court of Equity.

Agitation of a Cauſe in one Court, no Reaſon to put off the Trial of the ſame Cauſe depending in another.

E **A new** Trial ſhall not be upon Acquittal in Criminal or Capital Caſes; but upon Conviction a new Trial may be granted upon Cauſe. *Ibid.* 9, 124.

In criminal Caſes no new Trial after Acquittal; but after Conviction there may.

F **A new** Trial not to be granted for the Exceſſiveneſs of Damages, nor for Words ſpoken by the Attorney. *Ibid.* 97.

No new Trial for Exceſſiveneſs of Damages.

G **If** the Plaintiff give Notice to the Defendant that he will try his Cauſe that Term, although he be not ready to try it at the Day appointed, yet he is not bound to give new eight Days Notice of the Trial, but may give Notice for the next Sitting after. *Hill.* 23 *Car. B. R.*

If Plaintiff gives Notice of Trial, and is not ready to try it at the Day, he may give Notice for next Sitting.

If no Jury appear, there muſt be a new Notice.

A If there be Notice given for a Trial, and no Jury appear at the Day, there ought to be a new Notice given if the Party will try his Cauſe at another Day: *Paſch.* 24 *Car. B. R.* For elſe the Defendant cannot know when the Plaintiff will try his Cauſe, or whether he will try it or no.

New Trial may be granted for Want of due Notice.

B Altho' the Defendant do go to a Trial without ſufficient Notice given unto him of the Trial, and there be a Trial accordingly, this Trial is not binding unto the Defendant, but he may (if he pleaſe) have a new Trial granted for want of due Notice: *Paſch.* 1650. *B. S.* 14 *Apr.* For the Rules of the Court are not to be broken by the Conſent of the Parties; and it may be if he had had due Notice, he might have been able to make a better Defence, though he ventured to go to Trial with ſuch Proof as he then had.

The Proſecutor in an Information muſt bring the Cauſe to Trial at his own Coſts; and a Perſon indicted at his.

C The Proſecutor in an Information brought in this Court, ought to bring the Cauſe to a Trial at his own Coſts; but in an Indictment which is ſolely at the Suit of the King, he that is indicted muſt bring the Cauſe to a Trial at his own Charges: *Paſch.* 1650. *B. S.* 24 *Maii.* An Information is preferred as well for the Benefit of the Informer as the King, and therefore it is Reaſon he ſhould bring it to a Trial at his own Charges; but an Indictment is not ſo.

Where the Plaintiff muſt give the Defendant a Term's Notice of Trial.

D If a Cauſe be appointed to be tried in one Term, and the Plaintiff doth not then proceed in his Trial, but reſts for a Year or more after, if he will after ſo long Time try the Cauſe, he muſt give the Defendant a whole Term's Notice before his Trial: 1652. *B. S.* Becauſe by this long Delay the Defendant might not think he would ever try it, and ſo cannot in a ſhort Time provide to make his Defence.

If the Trial be the laſt Day of the Term, Judgment cannot be entered till the Term after.

E If a Trial be had the laſt Day of a Term, Judgment cannot be entered upon that Verdict until the next Term after; for Judgments muſt be given in the Term: By *Rolle* Chief Juſtice, 1652. *B. S.* Nor till the four firſt Days within the Term be paſſed; for ſo long Time hath the Defendant by the Rules of the Court to ſpeak in Arreſt of Judgment: But if it be tried the Day before the End of the Term, the Plaintiff may give his Rule, and have Judgment the ſame Term, if nothing be moved in Arreſt of Judgment.

When Judgment muſt be given upon a Trial in *London* or *Middleſex*.

F So if a Trial be had the Sitting after Term, Judgment cannot be entered upon that Verdict until the next Term after, for there cannot be a Rule given then for Judgment; for all Judgments muſt be (or are ſuppoſed to be) given in the Term *Sedente Curia*: But if it be tried the Day before the End of the Term, the Plaintiff may give his Rule, and have Judgment in the ſame Term, if nothing be moved in Arreſt of Judgment.

Plaintiff may try his Cauſe when he will, if he have given due Notice.

A By *Glyn* Chief Juſtice. Upon a Motion for a new Trial between *Williams* and *Purret*: *Paſch.* 1656. *B. S.* The Plaintiff is not bound to attend upon the Defendant at his Trial, but may try his Cauſe when he will, if he have given due Notice of the Trial.

If the Cauſe be made a *Remanet*, Plaintiff need not give new Notice.

B By *Glyn* Chief Juſtice. Upon a Motion for a new Trial between *Aſkue* and *Landy*, *Paſch.* 1656. *B. S.* Although due Notice ought to be given of a Trial before the Trial, yet if there be ſo many Cauſes to be tried on the Day appointed, that the Cauſe cannot be tried, and it is made a *Remanet*, the Plaintiff needs not give new Notice, but the Defendant muſt attend till it can be tried.

The ſame Jury may not try the ſame Iſſue.

C If a Trial be had, and a Verdict thereupon given, the ſame Iſſue may not be tried again by the Jury that tried it before: 1655. *B. S.* For it is more than probable they will give the ſame Verdict again.

Where the Defendant may give a Rule to try the Cauſe by Proviſo.

D Where the Plaintiff will not try his Cauſe in ſuch due Time as he ought to do, by the Rules of the Court, the Defendant may give a Rule to try it by Proviſo, and upon due Notice thereof given to the Plaintiff, proceed to Trial by Proviſo, to the End that he may diſcharge himſelf of the Action, and recover his Coſts; and this is given by the Statute of 23 *H.* 8. *cap.* 15. See the Statute. See Title **Trial by Proviſo.** *Note*, In the *Diſtringas Juratorum* there is this Clauſe, *Proviſo ſemper quod ſi duo Brevia tibi venerint, unum tantum eorundem exequaris & retornes.*

23 H. 8. cap. 15.

Why called Proviſo.

The Defendant is to have fourteen Days Notice for Trial in *London* or *Middleſex*, if he lives forty Miles diſtant.

E If in any Cauſe to be tried in *London* or *Middleſex*, the Defendant do live forty Miles diſtant from *London*, the Plaintiff, or his Attorney, by the Rules of the Court, ought to give the Defendant, or his Attorney, fourteen Days Notice of the Trial before he try his Cauſe; that the Defendant be not ſurpriſed for want of ſufficient Time to get his Witneſſes to be at the Trial; which fourteen Days is accounted a convenient Time for doing thereof.

New Trial in Murder, and why.

F There may be a new Trial upon an Indictment for Murder, where the Trial was by a wrong *Venue.* 6 *Rep.* 14. *b.*

A Plaintiff may try his Cauſe the next Aſſizes after he hath withdrawn his Record.

G Although the Plaintiff, after Iſſue joined, and at the Aſſizes where he was to try his Cauſe, withdraw his Record of *Niſi Prius*, yet he may try the Cauſe at the next Aſſizes after, if he pleaſe; for the *Retraxit* of the Record doth only import, That he intends to forbear to try his Cauſe *hac vice* only; and if he do not try it at the next Aſſizes after, then the Defendant may (if he will) try it by Proviſo; and if the Defendant do not then try it by Proviſo, the Plaintiff may then give new Notice of a Trial to the Defendant, and try it at the next Aſſizes following.

Trial by Proviſo.

Saturday no Day for Trials at Bar.

Note, It is not the Courſe of this Court to have Trials at the Bar upon *Saturday*, becauſe thoſe Days are not appointed for Matters in Law; yet in the Caſe of *Dikes* againſt the Lady *Lake*, a Trial was permitted to be upon *Saturday*, becauſe the Jury was adjourned to that Day by the Court, and the Court was alſo informed, That the Trial would not be long, and ſo would hinder but little Buſineſs of the Day. A

The Court may judge of Maihem by Inſpection.

In an Appeal of Maihem, the Court may judge of the Maihem by Inſpection of the Party, or put it upon the Trial of a Jury. 8 *H.* 6. 15. B

Seiſin in *Kent* tried in *London*, good after Verdict.

Seiſin of Lands in *Kent* is tried in *London*, and it ſeem'd to the Court well enough after a Verdict, by the Statute of 16 & 17 *Car.* 2. *cap.* 8. See *Raym.* 393. C

Where the Court will try a Felon at the Bar.

This Court will grant an *Habeas Corpus* to try a Felon at the Bar, altho' the Felony was not committed in the County of *Middleſex*, if there be not a Gaol-delivery in the uſual Manner in the County where the Felony was committed; but it muſt be by a Jury of the County where the Fact was committed: *Hill.* 21 *Car. B. R.* This is done for the Expedition of Juſtice in puniſhing Offenders. D

Covenant in one County, and Breach aſſigned in another, whether it be a Miſtrial.

Covenant brought in one County, and the Breach aſſigned for not repairing a Houſe in another County, and the Trial had in the firſt County; this was doubted to be a Miſtrial. See *Raym.* 85, 86. E

Miſtrial aided by 16 & 17 *Car.* 2.

A Miſtrial is aided by 16 & 17 *Car.* 2. *cap.* 8. F

Where a Bond muſt be tried.

Trial of a Bond is to be where it is dated to be made. *Ibid.* 430. G

Where Non-age.

Non-age may be tried where the Party was commorant, and not where the Writ was brought, if collateral to the Action. *Ibid.* 458. H

Bond to pay Money at *Berwick*, tried at *Belfort*.

A Debt upon a Bond conditioned to pay Money in *Berwick*, was tried at *Belfort*; and that in Caſes of Trials concerning Things ariſing in *Berwick*, the Uſe is, to ſuggeſt upon the Roll, that the King's Writ doth not run in *Berwick*, and pray a *Venire* may be of the next Vill to *Berwick*, which is *Belfort*; and upon this a *Venire* is directed to the Sheriffs of *Northumberland*, to make to come Twelve out of *Belfort*, to try this Iſſue by *Niſi Prius*; and this is a good Trial. *Raym.* 173, 174. I

Where a Thing done in *Wales* ought to be tried.

A Thing done in *Wales* ſhall, by Common Law, be tried in the next County adjoining. *Ibid.* K

Where, if done in *Ireland*.

Alſo a Thing in *Ireland* was tried in the County of *Salop*, which is alledged to be the next County to *Ireland*. *Ibid.* L

That

A **That** a Trial by Conſent may be had in a foreign County, where ſuch Conſent is entered upon Record, otherwiſe not. *Raym.* 372.

Trial may be by Conſent in a Foreign County.

B **If** the Iſſue be no Knight, it ſhall be tried by the Country, and not by the King at Arms. *Ibid.* 379. But in a *quare impedit* the Defendant pleads, That he was knighted *puis le darrein continuance*, and the Plaintiff denies it, and Iſſue thereupon, and tried *per patriam*. *Ibid.*

Knight or not, tried by the Country.

C **A Trial** in that Court where the Iſſue tried was not joined, is not a good Trial, unleſs it be in the Caſe of an Iſſue joined in Chancery, in the Petty-bag Side, and from thence ſent to be tried in this Court: *Hill.* 21 *Car. B. R.* For there was nothing before them to try, and ſo it was *coram non Judice*.

Trial in that Court where the Iſſue was not joined, is not good.

D **Juſtices** of Peace at the Quarter-Seſſions, do oftentimes try petty Felonies committed in the County where they are Juſtices: *Paſch.* 22 *Car. B. R.* But they uſually leave greater Offences to be tried by the Juſtices of the Gaol-delivery at the Aſſizes, that ſuch Trials may be more ſolemn in the Eye of the Country.

Quarter-Seſſions may try petty Felonies.

E **That** the Bounds of Vills are triable in Eccleſiaſtical Courts, of Pariſhes not. 1 *Lev.* 78.

Bounds of Vills, where triable.

F **If** the Cauſe of Action in Covenant ariſes in two Counties, where it ſhall be tried. See *Eund.* 114, and 252. 2 *Lev.* 122, 164.

Where a Cauſe of Action ariſing in two Counties.

G **Of** Murther in *Wales*, in the next *Engliſh* County. *Ibid.* 118.

Murther in *Wales*.

H **Tranſitory** Matter ariſing in one County, cannot by Plea be brought into another County. *Ibid.* 149.

Tranſitory Matter in one County, cannot be brought into another.

I **Foreign** Matter tried in the County where the Action is brought by the new Statute. *Ibid.* 207.

Foreign Matter in the County where Action is brought.

K **Prieſt** or not Prieſt, how it ſhall be tried. 2 *Lev.* 250.

Prieſt or no Prieſt, how tried.

L **Trial** directed by the Court of Exchequer to *Cheſter* and other Courts, in indifferent Counties. *Ibid.* 33.

Exchequer directs Trials to *Cheſter*, &c.

M **If** the Court do believe that the Jury have given their Verdict againſt the Evidence given unto them, they may order a new Trial to be in the Caſe, upon Payment of Coſts. *Mich.* 22 *Car. B. R.*

If Verdict be given againſt Evidence, the Court will order a new Trial.

N **There** may be a good Trial in a Cauſe, although the Defendant's Plea be ill: *Hill.* 22 *Car. B. R.* For the Trial depends not upon the Plea, but upon the Iſſue joined; and if there be a good Iſſue joined, the Trial is good, whatever the Plea be.

The Trial may be good, tho' Defendant's Plea be ill.

Alien Artificer, where tried.

A **Trial** of an Iſſue alien Artificer, or not, ſhall be where the Writ was brought. 1 *Saund.* 8.

Trial directed to try the Truth of the Plea.

B **Where** after Demurrer to the Defendant's Plea, and Argument thereupon, a Trial was directed to try the Verity of the Plea. *Ibid.* 353.

What Trials in *London* by Jurors of the four next Wards.

C **What** Trials in *London* ought to be by the Jurors of the four next Wards, by the Cuſtom there. 2 *Saund.* 252, *&c.*

The King may try his Cauſe in what Court he pleaſeth.

D **At** *Weſtminſter-Hall* the King may try his own Cauſe in what Court he pleaſeth: *Paſch.* 23 *Car. B. R.* This is by his own Prerogative; for all Courts of Juſtice are his Courts, and it is not reaſonable he ſhould be ſtreightened in his Choice where he will proceed, but have Liberty to ſue where he pleaſeth.

A local Matter is generally tried in the County where the Cauſe of Action ariſeth.

E **A local** Matter generally is not to be tried in a Foreign County, but in the County where the Cauſe of Action ariſeth: *Paſch.* 23 *Car. B. R.* For there may the beſt Knowledge of the Matter be had; and it is alſo for the greater Eaſe of the People, and leſs Charge; yet ſometimes, and upon ſpecial Reaſon, the Matter is tried by a feighed Action out of the proper County. See before.

One committed for one Felony may be tried for another.

F **If** one be committed to the Gaol for one Felony, yet the Juſtices may try him for another Felony, for which he was not committed: *Trin.* 23 *Car. B. R.* By *Bacon*, Juſtice. See before, Title **Felony.**

Decree in Chancery ſhall be tried by a Jury.

G **A Decree** in Chancery ſhall be tried by a Jury, and not by itſelf, for it is not a Record, but is a Decree recorded: *Mich.* 23 *Car. B. R.* And there is Difference between a Record, and a Thing recorded; for a Record is a Judgment, or other Act done in a Court of Record, and recorded there; but the Chancery, as it is a Court of Equity, is not a Court of Record, but an arbitrary Court, although it be a Court of Record, as touching Things agitated in the Petty-Bag Office.

Verdict in the *Huſtings* ſet aſide, and new Trial and contrary Verdict.

H **Where** a Verdict in the *Huſtings* in *London* was ſet aſide, and a new Trial, and contrary Verdict. 1 *Lev.* 311.

One not ſerved with Proceſs to give Evidence, may not be examined on a *Voire dire.*

I **One** that is not ſerved with Proceſs to give his Teſtimony at a Trial, may not be examined upon a *voire dire* concerning any Matter which concerns the Trial: *Mich.* 23 *Car. B. R.* For it is in a Manner to examine him as a Witneſs in the Cauſe, which ought not to be, becauſe he appears not as a Witneſs.

Conſent of the Owner of the Land to make an Ejector to try the Title, is good.

K **The** Conſent of the Owner of the Land to make one Ejector to try the Title of the Land, is good, if it be not a Plot betwixt him and the Ejector to ouſt the Leſſee of the Land of his Poſſeſſion: *Mich.* 14 *Car. B. R.* For there can be no other Inconveniency in it.

A **In** a Trial for ſubtracting of Tithes, in an Action grounded upon the Statute of 2 *Ed.* 6. the Plaintiff ought firſt to begin with the Proof of the Value of the Tithes, before he proceeds to ſhew his Title to them, which Title is his Inſtitution, Induction, and reading and ſubſcribing of the Articles, *&c.* *Mich.* 24 *Car. B. R.* For he muſt prove there were Tithes, and of ſuch a Value taken away, which is the very Ground of the Action, before he can make any Title to them; for if there were no Subtraction, there is no Cauſe of Action.

How Plaintiff muſt proceed in a Trial for ſubtracting of Tithes.

B **It** is a Miſtrial for a Thing to be tried before a Judge, who hath Intereſt in the Thing in Queſtion; and the Requeſt or Conſent of the Parties concerned in the Trial will not help it: *Mich.* 24 *Car. B. R.* For ſuch a Trial cannot be ſuppoſed to be indifferent; for none ought to be Judge in his own Cauſe, or in any Cauſe wherein his own Intereſt is any ways concerned.

If the Judge has Intereſt in the Thing in Queſtion, it is a Miſtrial.

C **A Miſtrial** is helped by the Statute of Jeofails, but not a void Trial, *to wit*, where there is no Iſſue joined to be tried; but in ſuch Caſes there muſt be a Repleader, that the Matter in Queſtion may be put in Iſſue to be tried: *Mich.* 24 *Car. B. R.* See Title **Jeofails** and **Replication.**

A Miſtrial is help'd by the Statute, but not a void Trial.

D **That** an Indictment of High Treaſon may be tried by *Niſi prius*. *Raym.* 367.

Indictment of High Treaſon may be tried by *Niſi prius*.

E **A** *Tales de Circumſtantibus* may be awarded in Caſe of Treaſon, by the Statute of 4 *&* 5 *Phil. & Ma. cap.* 7. where the Queen is Party. *Ibid.*

A *Tales* may be awarded in Caſe of Treaſon by 4 & 5 **P. & M.** cap. 7.

F **If** at a Trial the Court do ſee that one of the Parties is ſurprized, but not by any Fault or Laches of his own, but by ſome other Caſualty, they may in their Diſcretion put off the Trial to another Time, until the Party ſurpriſed may be better provided for his Trial: *Trin.* 1650. *B. S.* 3 *Julii.* For this is not to delay Juſtice, but to give Time that clearer Juſtice may be done, and that Suits may in more Probability be put to a Concluſion, which upon Surpriſal is ſeldom ſeen.

The Court may put off the Trial if either of the Parties be ſurpriſed.

G **The** Court of Chancery will not uſually ſtay a Trial at Law by an Injunction after Iſſue joined, and the Parties are ready for the Trial, but they will grant an Injunction to ſtay Judgment after the Trial, if there appear to be any Equity in the Cauſe: *Paſch.* 1652. *B. S.*

Chancery will not ſtay a Trial after Iſſue joined.

H **By** *Glyn* Chief Juſtice, *Trin.* 1656. If a Cauſe be removed out of an inferior Court to this Court, it ought to be tried the ſame Term it is removed, that the Party may not be delayed; for the Law doth not approve of dilatory Proceedings.

A Cauſe removed from an inferior Court, ought to be tried the ſame Term.

Jury impanelled to try an Iſſue in one County, may try a Thing incident in another.

A **By** *Glyn* Chief Juſtice: *Trin.* 1656. A Jury impanelled to try an Iſſue in one County, may try a Thing that is incident to the Trial of that Iſſue, though it be in another County; as if an Action of Debt be brought againſt an Heir, and he pleads *Riens per deſcent*, and Iſſue is joined upon it, the Jury may enquire of Aſſets in any County of *England.*

City of *Briſtol* will not bring a Matter to be tried at Bar.

B **It** was ſaid by *Roll* Chief Juſtice, That the City of *Briſtol* will not bring a Matter to be tried here at the Bar, no more than the City of *London* will: 1654. *B. S.* Becauſe it ſeems they have the like Privilege to try the Title of Freeholds within the City, as *London* hath.

All Trials ſhall be *per Pais.*

Mag. Char. *c.* 29.

C **No** Perſon ſhall be condemned without Trial by the lawful Judgment of his Peers, or by the Law of the Land. *Magna Charta. cap.* 29.

Trials for Murder muſt be by a Jury of the proper County.

D **All** Trials for Murder muſt be in the County where the Fact was committed. *Cro. Car.* 247. *pl.* 8.

Stroke in one County, and Death in another, how to be tried.

5 & 6 **Ed.** 6. *cap.* 16.

E **But** if the Stroke or Poiſoning be in one County, and the Death in another, an Indictment found by a Jury of the County where the Party died, ſhall be as effectual as if the Stroke or Poiſoning had been done in the ſame County where the Party ſhall die.

How in Caſe of Acceſſories.

F **How** the Trial ſhall be of an Acceſſory in one County, to a Felony in another. *Ibid. Sect.* 4.

How Peerage is to be tried.

G **Duke** or not, Earl or not, Baron or not, ſhall be tried by Record. 6 *Rep.* 53. *a.* But a Wife, who is a Dutcheſs, Counteſs, or Baroneſs, by Marriage, Dutcheſs or not, Counteſs or not, Baroneſs or not, ſhall be tried *per Pais.* 6 *Rep.* 53. *a.*

Where a Baroneſs by Marriage loſes her Nobility, and where not.

H **If** a Baroneſs by Marriage marries one under Nobility, ſhe hath loſt her Dignity; but if ſhe be of noble Deſcent, ſhe always continues noble. 6 *Rep.* 54. *b.*

How Dutcheſſes, Counteſſes, and Baroneſſes ſhall be tried.

23 **H.** 6. *cap.* 9.

How it ſhall be where a Baroneſs marries a Commoner.

I **Where** Dutcheſſes, Counteſſes, and Baroneſſes, are indicted of Treaſon or Felony, they ſhall be judged before ſuch Judges and Peers of the Realm, as Peers of the Realm ſhould be. See *Co.* 6 *Rep.* 52. *b.* If a Woman noble by Birth marries under the Degree of Nobility, yet ſhe ſhall be tried by her Peers; but where ſhe is noble by Marriage, and marries a Commoner, there ſhe loſes it. 2 *Inſt.* 50.

None but the King's Courts at *Weſtminſter* can write to the Biſhop to certify.

K **None** but the King's Courts at *Weſtminſter*, or Juſtices of Gaol-Delivery, can write to the Biſhop to certify Baſtardy, Loyalty of Marriage, or other Eccleſiaſtical Matters; and therefore no inferior

Court, as *London*, *York*, &c. can do it: But in thoſe Caſes the Plea muſt be removed into the Court of Common Pleas; and that Court may write to the Biſhop, and upon the Biſhop's Anſwer, remand the Record. *Co. Lit.* 134.

A **The** Judges may judicially take Notice of Almanacks, and be informed by them. 1 *Leon. Caſe* 328. And ſo it was alſo adjudged in *Cro. Eliz.* 227. *pl.* 12.

Of Trials by Almanacks.

B **Of** all manner of Trials whatſoever. See 9 *Rep.* from fol. 30. *b.* to 33. *a.*

Of all Trials whatſoever.

C **Clergy**, how to be tried. See Title **Clergy.**

Clergy, how.

D **If** a Nobleman be indicted for Murder, he ſhall be tried by his Peers; but if an Appeal be brought againſt him, which is the Suit of the Party, he ſhall not be tried by his Peers, but by an ordinary Jury of twelve Men. *Co.* 2 *Inſt.* 49.

Where a Peer ſhall be tried by his Peers, and where by a Jury.

E **How** Trials for Treaſon, both againſt Peers and Commoners, ſhall be. See the Statute at large. 7 *W.* 3. *cap.* 3. See alſo Title **Counſel and Counſellor.** See alſo 9 *Rep.* 30. *b.* to 33. *a.*

How Trials for Treaſon ſhall be both againſt Peers and Commoners.
7 **W.** 3. cap. 3.

F **All** Trials in inferior Courts of Record muſt be tried before an Utter Barriſter, or his Deputy, who is an Utter Barriſter. *Cro. Car.* 79. *pl.* 6.

All Trials in inferior Courts muſt be before an Utter Barriſter at leaſt.

G **Where** there ought to be a Place alledged from whence the *Venue* ſhould come, and there is no Place alledged, but an Iſſue is joined, and the *Venire* is *de Corpore Comitatus*, and a Trial is thereupon had: This is a good Trial, and there ought not to be a Repleader. For here is a good Pleading, and a good Iſſue joined, and well tried by a Jury: And a Repleader is to be only where the Pleading hath not brought the Iſſue in Queſtion which was to have been tried. *Note*, Now by the Statute 4 & 5 *Annæ*, it is enacted, That the *Venire* for the Trial of any Iſſue in a Civil Cauſe, ſhall be awarded of the Body of the County where the Iſſue is.

Formerly, if there was no *Venue* laid, from whence the Jury was to come, a Trial by a Jury *de Corpore Comitatus*, was good.

Where a Repleader to be.

4 & 5 **Annæ.**

H **Where** the Iſſue is upon *Non Conceſſit*, or *Non Dimiſit*, of a Thing which paſſeth by Deed, the Trial ſhall be where the Grant or Demiſe is alledged: But where a Feoffment, or Leaſe is pleaded, the Iſſue being *Non Feoffavit*, or *Non Dimiſit*, the Trial (becauſe of the Livery) ſhall be where the Land lies. *Cro. Jac.* 375. *pl.* 1.

Where the Trial is to be when the Iſſue is *Non Dimiſit*, or *Non Conceſſit*.

And where when it is upon *Non Feoffavit*.

I **When** a tranſitory Action is laid in a County where it did not ariſe, and the Defendant by Pleading brings it into the County where the Cauſe of Action did ariſe; yet it may be tried in the County where it was firſt laid, and not in the County where

No Judgment ſhall be ſtayed after a Verdict, ſo that the Cauſe be tried by a Jury of the proper County.

the

16 & 17 Car. 2. cap. 8.

the Defendant hath brought it by Pleading; and it ſhall be good after a Verdict, by Statute 16 & 17 *Car.* 2. *cap.* 8. *Sect.* 1. which ſays, That after a Verdict no Judgment ſhall be ſtayed, for that there is no right *Venue*, ſo as the Cauſe be tried by a Jury of the proper County, or Place where the Action is laid; but the Defendant may, if he think fit, move, That there may be a *Venire* to try it where it is brought by Pleading, and the Court doth uſually grant it.

A Bond dated at *Paris* in *France*, where triable.

A **A Bond** bearing Date at *Paris* in *France*, is not triable here. *Lutw.* 950.

Action on a Bond made in *Wales*, &c. cannot be tried here.

B **An** Action brought upon a Bond alledged to be made in *Wales*, *Ireland*, *Normandy*, &c. cannot be tried here: But a Plea in Bar to an Action brought, ariſing there, hath been queſtioned, Whether it ſhould not be tried where the Action is brought? And in ſuch a Caſe, if the Plea in Bar ariſes wholly out of the Realm of *England*, the better Opinion is, That ſuch Plea wants a Trial. *Vaugh.* 413. See *Dowdale*'s Caſe. 6 *Rep.*

Where Things done beyond Sea may be tried here, and where not.

C **Where** as well the Contract as the Performance is totally done, or to be done, beyond Sea, there it cannot be tried by our Law; but where a Promiſe is made here to do a Thing beyond Sea, it may be tried here. 6 *Rep.* 47. *b.* 48. *a.*

A Treſpaſs at Fort *St. George*, *in partibus Tranſmarinis*, is repugnant.

D **A Treſpaſs** ſuppoſed to be committed at *Fort St. George*, *in partibus Tranſmarinis*, viz. *apud London*, &c. is repugnant and abſurd. *Lutw.* 950.

Where Trials in the King's Dominions beyond Sea ſhall be.

E **An** Iſſue ariſing out of the Juriſdiction of the Court, although it ariſes within the Dominion of *England* out of the Realm, ſhall not be tried in *England*. *Vaugh.* 404.

Where Dominions, Leagues, *&c.* are to be tried.

F **Where** Dominions, Leagues and Truces are to be tried. *Ibid.* 288.

How Piracies and Robberies upon the Sea ſhall be tried, and where.
27 H. 8. cap. 4.

G **All** Offences done at Sea, or in any other Place where the Admiral pretends to have Juriſdiction, ſhall be inquired, tried, and determined in ſuch Shire as the King by his Commiſſion ſhall direct, and in like Form as if the Offences had been done upon the Land; which Commiſſion ſhall be under the Great Seal, directed to the Lord Admiral, his Lieutenant, Deputy or Deputies, and three or four other ſubſtantial Perſons to be named by the Lord Chancellor, to hear and determine ſuch Offences after the Courſe of the Common Law, uſed for Felonies committed within this Realm. *Sect.* 1.

The

A **The** Commiſſioners, or three of them, have Power to inquire by the Oaths of twelve lawful Men, in ſuch Manner as if the Offences were done at Land; and ſhall be proceeded againſt by Indictment, and be tried by twelve Men of the Shire, appointed by ſuch Commiſſion; and if convicted ſhall ſuffer Death, Loſs of Lands and Goods, as if they had been convicted of Felony or Murder done at Land. *Sect* 2. and ſhall not have the Benefit of their Clergy. *Sect.* 3.

To inquire by the Oath of a Jury.

To be indicted, and tried by twelve Men of the Shire: If convicted to ſuffer Death without Clergy; and forfeit Lands and Goods.

B **All** Treaſons, Felonies, Robberies, Murders and Conſpiracies to be committed in or upon the Sea, or in any other Place, where the Admirals have or pretend Juriſdiction, ſhall be inquired, tried, heard, and determined, as herein is next before ſet forth.

How Treaſons, Murders, *&c.* committed at Sea ſhall be tried. 28 H. 8. cap. 15.

C **Married** or not married, or lawfully or not lawfully married, in Perſonal Actions, ſhall be tried by a Jury. 1 *Lev.* 41.

Married or not, is triable by a Jury.

D **It** is a Maxim, *Quod ibi ſemper debet fieri triatio, ubi juratores meliorem habere poſſunt notitiam.* 7 Rep. 1. b.

A Maxim where Trials ought to be.

E **Where** one Matter in one County is dependant upon the Matter in another, the Plaintiff may chuſe to bring his Action in which County he pleaſes. 7 *Rep.* 7. *b.* See much good Matter where Trials are to be, from *fol.* 1. to *fol.* 4. *b.*

Where Matter is in two Counties, the Trial may be in either.

F **Matter** ſhall be tried in the County where it ariſes, and not where the Action is laid; and this by the new Statute of Jeofails. 16 & 17 *Car.* 2. *cap.* 8. 1 *Lev.* 107.

Matter muſt be tried in the County where it ariſes, not where the Action is laid. 16 & 17 Car. 2. cap. 8.

G **Iſſue** was joined upon a Feoffment of Lands in *Oxon*, tried in *London*, where the Action was laid, and good, by the Statute of 16 & 17 *Car* 2. *cap.* 8. *Ibid.* 178.

Iſſue upon a Feoffment of Lands in *Oxon*, tried in *London*, good.

H **Debt** in *London* for Rent for Lands in *Eſſex*, upon *quoad part. nil debet* pleaded, & *quoad reſid.* Entry and Expulſion, and tried in *London*, and moved, That this was local: But *per Curiam*, It being tried where the Action is brought, it is cured by the Statute of 16 & 17 *Car.* 2. *cap.* 8. 1 *Lev.* 394. See Title **Jeofails.**

Debt in *London* for Rent for Lands in *Eſſex*, tried in *London*, upon Entry and Expulſion, and held good. 16 & 17 Car. 2. cap. 8.

I **A voluntary** Affidavit made before a Maſter of Chancery, is not to be given in Evidence at a Trial at Law; for a Maſter of the Chancery has no Authority to adminiſter ſuch an Oath: And therefore if the Party did ſwear falſly, it is no Perjury, nor can he be indicted for it, becauſe it is *coram non Judice*, and therefore ſuch Oaths are not to be given in Evidence.

A voluntary Affidavit before a Maſter in Chancery, is not to be given in Evidence upon a Trial at Bar.

If a *Venire fa.* be not filed, the Plaintiff may make a new one to try the Cauſe at another Aſſizes.

A **If** a *Venire* be not filed, the Plaintiff may make a new *Venire*, and try the Cauſe at another Aſſizes, and by another Jury. 3 *Annæ*, *B. R.*

By whom Excommunication to be certified.

B **An** Excommunication certified by an Official or Commiſſary, is naught; for it ought to be certified by none but the Biſhop, who can abſolve. 8 *Rep.* 68. *a.*

Where it is well directed, and where not.
How the Certificate to be.

C **A Certificate** *Univerſis Matris Eccleſiæ filiis*, or to the Court, is good; but *Univerſis Clericis & Literatis, &c.* where the Court is excluded, it is naught. 8 *Rep.* 68. *b.* See Title **Abatement.**

When Infancy ſhall be tried by Inſpection.

D **Upon** a Writ of Error to reverſe a Fine for a Nonage, or an *Audita Querela* for Nonage, the Age ſhall be tried by Inſpection. 9 *Rep. fol.* 30, to 33.

And when by the Country.

E **Where** an Infant appears by Attorney, it is Error, and ſhall be tried by the Country. *Ibid.*

Trial at Bar.

F **When** a Trial at Bar is to be moved for. *Salk.* 649.

Of a Cauſe in *London*.

G **A Cauſe** cannot be tried at Bar where the Action is laid in *London*, by Reaſon of their Charter. *Ibid.* 644.

To whom granted.

H **A Trial** at Bar is not denied to the Officers of the Court, or Barriſters. *Ibid.* 651.

Where of Common Right.

I **And** in any Cauſe of Value or Difficulty, a Trial at Bar may be had of Common Right. *Ibid.* 648.

The King a Party.

K **Alſo** where the King is Party, a Trial at Bar may be the laſt Paper-Day in Term. *Ibid.* 625.

New Trial.

L **A new** Trial after Trial at Bar refuſed in Ejectment; becauſe not concluſive. *Ibid.* 648. *vid.* 650.

When granted.

M **A new** Trial is rarely granted in hard Actions. *Ibid.* 644, 648.

The like.

N **As** in Caſe for negligent keeping Fire: Actions for Words, *&c.* *Ibid.* 653.

The like.

O **No** new Trial againſt the Equity of the Cauſe. *Ibid.* 644, 646.

The like.

P **Nor** for Abſence of Counſel. *Ibid.* 645.

The like.

Q **Nor** for Defect of Preparation. *Ibid.* 653. or any Omiſſion of the Party. *Ibid.* 273, 647.

The like.

R **Nor** for a Miſtake in Point of Law, or Want of Notice after a Defence made. *Ibid.* 646.

Indictment.

S **Indictment** for a Libel, Defendant acquitted, no new Trial. *Ibid.*

Jury miſ-directed.

T **Yet** a new Trial may be where the Judge of *Niſi Prius* miſ-directs the Jury. *Ibid.* 649.

Small Damages.

U **No** new Trial or Writ of Inquiry will be granted for too ſmall Damages, unleſs there is ſome Trick, *&c.* *Ibid.* 647.

A **A new** Trial for exceſſive Damages, and the ſame Damages being given, a third Trial denied. *Salk.* 649.

A third Trial denied.

B **A new** Trial, becauſe the Foreman had declared the Plaintiff ſhould never have a Verdict. *Ibid.* 645.

Jury partial.

C **Jury** after gone from the Bar ſent for an Act of Common Council given in Evidence, yet a new Trial was denied. *Ibid.*

Evidence ſent for by the Jury.

D **In** Treſpaſs for cutting Trees, a Verdict for the Defendant againſt Evidence; yet becauſe the Plaintiff had Benefit by the Cutting, a new Trial was denied. *Ibid.* 647.

Denied for cutting Trees.

E **And** *Note*, no new Trial can be in an Inferior Court. *Ibid.* 201, 650.

Inferior Court.

F **Nor** any Motion for a new Trial after a Motion in Arreſt of Judgment. *Ibid.* 647.

When not granted.

G **If** a Cauſe has lain at Iſſue four Terms, there muſt be a full Term's Notice of Trial. *Ibid.* 650.

Notice of Trial.

H **And** ſee a Verdict ſet aſide for want of ſuch Notice, and that Rule explain'd. *Ibid.* 645, 650.

Notice.

I **Suing** out a *Venire Facias* teſted the laſt Day of the Term, is not a Proceeding within Term as to Notice of Trial. *Ibid.* 650.

What not a Proceeding to make Notice good.

K **Two** Days Notice is to be given after *Ne Recipiatur* at Sittings, *&c.* *Ibid.* 653.

Ne Recipiatur.

L **A Trial** is not to be put off, for that a Suit is pending in the Spiritual Court for the ſame Matter. *Ibid.* 646, 649.

When Trial not to be put off.

M **If** the principal Cauſe be within the Juriſdiction, and an Iſſue ariſes which depends on Foreign Laws, it may be tried in the next County; and the Foreign Laws may be given in Evidence. *Ibid.* 651.

Foreign Laws.

N **And** how a Foreign Matter is to be laid in the next adjacent County here. See *Ibid.*

Foreign Matter.

O **In** what Caſes the Defendant may carry down a Cauſe to be tried by Proviſo. *Ibid.* 652.

By Proviſo's.

P **Trial** by Proviſo cannot be in the Caſe of the Crown, nor at *Niſi Prius*, unleſs by Warrant from the Attorney General. *Ibid.*

In the Caſe of the Crown.

Q **When** any Indictment is removed into *B. R.* the Defendant cannot carry it down to Trial without Leave of the Court. *Ibid.* 653.

Indictment.

R **And** on ſuch Removal by the Proſecutor, if the Defendant comes in by Proceſs, he ſhall give Security to try it. *Ibid.* 652.

Removal by the Proſecutor.

S **A Temporal** Matter incident in a Cauſe in the Spiritual Court, muſt be tried by the Rules of the Common Law. *Ibid.* 547.

Temporal Matter how to be tried.

Merits to be tried.

A Judgment was ſet aſide, tho' ſtrictly Regular, in Order to try the Merits of the Cauſe. *Salk.* 518. A

Bill of Exception.

Bills of Exceptions muſt be tendered at the Trial; and ſee the Nature thereof. *Ibid.* 288, 289. B

Venue alter'd.

The *Venue* in Actions of Conſpiracy brought in *Middleſex*, and founded upon an Indictment in *Middleſex*, alter'd by the Court, by Reaſon of the Power and Intereſt of the Plaintiff in *Middleſex*, and ordered to be tried in another County. *Skinner* 43, 44. C

New Trial.

Where a new Trial ſhall not be granted. 3 *Salk.* 361. D

Evidence as to one Defendant.

In Treſpaſs againſt three, the Plaintiff had a Verdict, but it was againſt Evidence as to one of them, yet no new Trial could be had. *Ibid.* 362. E

Inferior Court.

The Judge of an inferior Court cannot grant a new Trial after a *Scire Facias* againſt the Bail. *Ibid.* 363. F

New Trial.

Where a new Trial was granted. *Carth.* 499. G

After a Trial at Bar.

Where it was not granted after a Trial at Bar. *Carth.* 507. H

Ejectment.

On a Leaſe ſeal'd in Ejectment, no Judgment can be without a Trial. *Comber.* 13. I

Matter triable by Iſſue.

Nothing triable by Iſſue is to be directed by the Court to be tried by Reference. *Ibid.* 8. K

Reference, or *Audita Quærela.*

Where Trial is to be by Reference, or an *Audita Quærela*. *Ibid.* 14. L

Medietas Linguæ.

Where Trial is by *Medietas Linguæ*, a Special Jury muſt be returned. *Ibid.* 20. M

Coſts.

Coſts allowed for not going to Trial in Ejectment. *Ibid.* 102, 419. N

A Rule to ſtay Trial till Coſts paid. *Ibid.* 106. O

In what County.

Bonds and Deeds executed in one County tried in another. *Vide Comber.* 30. 75, 84, 115. P

Venire.

On a Trial at Bar, the Attorney committed for not bringing in the *Venire*. *Ibid.* 303. Q

Exceſſive Damages.

No new Trial or new Writ of Inquiry for exceſſive Damages. *Ibid.* 17, 170. *vid.* 357. *contra.* R

New Trials.

In what Caſes new Trials have been granted. *Ibid.* 18, 75. S

Or deny'd. *Ibid.* 14, 17, 84, 106. T

Notice.

Of Notice of Trial. *Ibid.* 65. U

Miſ-trial.

Of Miſ-trial. *Ibid.* 75, 84, 115. X

New Trial.

A new Trial is never granted in another Term after ſigning the Judgment. *Mod. Caſes in Law and Equity* 269. Y

A In Trover for a Horſe, if the Inn-keeper ſeize it for ſeveral Nights, 'tis Evidence of Converſion. *Mod. Caſes in Law and Equity* 172.

Converſion.

B Tho' he may detain a Horſe for one Night's Meat, yet he can't ſell it and pay himſelf, if he does 'tis a Converſion. *Ibid.* 173.

In an Inn-keeper.

C In Trover for a Ring mov'd to bring it into Court, deny'd; but Leave was granted to amend the Declaration. *Ibid.* 176.

For a Ring.

D In Trover for an Annuity Ticket, the Plaintiff was nonſuit. *Ibid.* 44.

For an Annuity Ticket.

E A Motion for a new Trial, becauſe the Jury found a General Verdict by the Judge's Direction, and that he refuſed to ſign a Bill of Exceptions; but denied, becauſe not made before the Judgment ſigned; *aliter*, the Court would have granted it. *Ibid.* 220.

Motion to be made before Judgment ſign'd.

F On an Indictment for Smuggling, *&c.* the Trial is to be within two Terms after Commitment. *Ibid.* 5.

Indictment

G On an Affidavit of the Indiſpoſition of a Witneſs, the eſtreating a Recognizance to try an Indictment was ſtayed on paying Coſts, and entring into a new Rule. *Ibid.* 288.

Recognizance reſpited.

Trial by Proviſo.

See { Damages.
Iſſue.
Trial.

H If the Plaintiff deſiſts proſecuting of his Action, and doth not bring it to Trial, then the Defendant may, after a Default, give him Notice of Trial by Proviſo, and ſue out a Venire for that Purpoſe.

Trial by Proviſo, what.

In Trials by Proviſo, the Plaintiff may be called to challenge the Jury.

A Where a Trial is had by Proviſo, the Plaintiff may be called to challenge the Jury, if he thinks fit, before the Jury be ſworn. *Trin.* 22 *Car. B. R.* For the Plaintiff is as it were in the Place of the Defendant, becauſe the Cauſe is brought to Trial by the Defendant.

When it may be after the Iſſue is entered.

B Where the Iſſue is entered, there, after Default made by the Plaintiff, the Defendant muſt the next Term give a Rule to try it by Proviſo, and he may then make up the Record and try it; and ſuch Trial is ſaid to be a Trial by Proviſo, becauſe in the Writ of *Diſtringas Juratorum*, there is inſerted this Clauſe: *Proviſo ſemper quod ſi duo brevia tibi venerint, unum tantum eorundem exequaris & retornes.*

Trover and Converſion.

See
Baron and Feme.
Converſion.
Pleading.
Sheriff.
Words.

Trover, what.

C Trover is an Action which a Man hath againſt another, who having found any of his Goods, refuſes to deliver them to him upon Demand; or elſe, if another Man hath in his Poſſeſſion my Goods, by Delivery to him, or otherwiſe, and he ſells or makes Uſe of them without my Conſent, this is a Converſion, for which an Action of Trover lies: So alſo, although he doth not actually convert them, but doth not deliver them to me upon Demand, Trover lies.

Trover in one County, and Converſion in another, where the Action may be laid.

D Where the Trover of Goods is in one County, and the Converſion is in another County, the Action brought for theſe Goods may be laid in the County, where the Converſion was, or in any other County (unleſs it be brought againſt an Officer within the Statute of 21 *Jac.* for then it muſt be in the proper County) it being only a tranſitory Action, and neither the Place of the Trover nor Converſion traverſable: *Paſch.* 23 *Car. B. R.* This Action is called an Action of Trover and Converſion, and not a Trover only; and the Action is brought, as well for the Defendant's converting of the Goods to his own Uſe, as for the finding and detaining of them.

A **Two** Cauſes of Action for Trover and Converſion cannot be joined in one Action: *Trin.* 23 *Car. B. R.* Becauſe the Cauſes of Action are for ſeveral Trovers and Converſions at ſeveral Times and Places.

Two Cauſes of Action cannot be joined in one Trover.

B **An** Action of Trover and Converſion may be brought for Goods, although the Goods for which the Action is brought, do come into the Poſſeſſion of the Plaintiff that brings the Action before the Action brought: *Paſch.* 1651. *B. S.* 22 *Apr.* For the coming of the Goods into his Poſſeſſion before the bringing of the Action for them, doth not purge the Wrong, or make Satisfaction for that which was done to the Plaintiff, by the finding and detaining the Goods; and ſo he hath ſtill Cauſe of Action, although his Damages may not be very great, in regard he hath his Goods again.

It lies for Goods that came to the Plaintiff's Poſſeſſion before the Action brought.

C **In** an Action of Trover, where you cannot prove an actual Converſion, you muſt prove a Demand made, before the Action brought, of the Thing for which the Action is brought, and that the Thing demanded, was not then delivered: For although an actual Converſion cannot be proved, yet a Demand, and refuſing to deliver the Goods demanded, is a ſufficient Evidence of a Converſion.

What muſt be proved in Trover, when a Converſion cannot be proved.

D **Where** an Action of Trover doth conſiſt of a great many ſeveral Particulars of Goods, the Attorney, or ſome other Perſon, ought to take a Copy of the Particulars out of the Declaration, and at the Trial of the Cauſe to ſwear the ſame to be a true Copy, and then the ſame muſt be delivered to the Witneſs, who is to prove the Property in the Plaintiff, and the Value of them.

A Copy ought to be taken of the Particulars out of the Declaration.

E **Either** an Action of Trover, or an Action of Detinue, at the Plaintiff's Election, may be brought for Goods detained: For it is but Juſtice that the Party ſhould have his Goods detained in Specie if they may be had, or elſe Damages to the Value of them, for the Detaining and Converſion of them.

Either Trover or Detinue may be brought for Goods detained.

F **So** may Treſpaſs or Trover for the ſame Thing. *Cro. Jac.* 50. *pl.* 21.

So may Treſpaſs or Trover.

G **Where** there is a framed Word to ſhew the Intent of the Parties, it is good in a Declaration in Trover, although it be not a proper *Latin* Word. *Cro. Jac.* 307. *pl.* 4.

A framed Word in a Declaration in Trover, is good.

H **So** alſo where it is ſaid *Pretii* in the Declaration, whereas as it was moved it ſhould have been *ad valentiam*, yet held good both Ways. *Cro. Jac.* 307, 148. *Dyer* 121. *b.*

Pretii, or *ad valentiam*, is good both Ways.

An

Trover is an Action of the Caſe, wherein only Damages are recovered.

A **An** Action of Trover and Converſion is an Action on the Caſe, and brought only to recover Damages.

How to be ſafe in receiving of Goods.

B **If** I deliver Goods to *A.* generally, to be kept by him, and they are ſtolen, yet he is chargeable for them: But if he take them to keep as his own, there he ſhall not be chargeable if ſtolen. 4 *Rep.* 83. *b.*

Trover and Treſpaſs will not lie in one Declaration.

Not Trover and *Aſſumpſit.*

C **Trover** and Treſpaſs cannot be brought in one Declaration: *Note*, The Allegation of the Converſion of the Goods in Treſpaſs, is but for Aggravation of Damages, and good. *Lutw.* 1526. Neither will Trover and *Aſſumpſit* lie in one Declaration. 2 *Lev.* 101. 3 *Lev.* 99.

What is a good Plea in Trover.

D **It** is no good Plea in Trover to ſay, That the Plaintiff acquitted him in Conſideration of a Promiſe to pay him twenty Shillings; for that is only giving of one Action in lieu of another: But if the twenty Shillings had been paid before the Action brought, it had been good. *Lutw.* 1583.

Sale in a Market Overt is not pleadable.

E **A Sale** in a Market Overt, where he juſtifies the Converſion is no Plea; becauſe it amounts to but the General Iſſue. *Cro. Jac.* 165. *pl.* 3.

Defendant entitles himſelf for Tithes, is naught; it ſhould be the General Iſſue.

F **Trover** for Corn, the Defendant entitles himſelf thereto as Tithes ſevered; this amounts but to a Not guilty, and naught; being ſhewn for Cauſe. *Cro. Car.* 157. *pl.* 6.

A Sheriff may bring Trover for Goods taken out of his Cuſtody.

G **Trover** lies by a Sheriff for Goods by him taken in Execution, and afterwards taken from him. 1 *Lev.* 282. 2 *Saund.* 47.

What will maintain Treſpaſs, and what Trover.

H **Poſſeſſion** without Property is enough to maintain Treſpaſs, but not Trover; becauſe Trover is grounded upon the Right, and there muſt be a Property in the Plaintiff. 1 *Mod.* 30.

Trover before Marriage, and Converſion after.

I **Trover** before Marriage, and a Converſion after, and the Huſband and Wife join, and good. 2 *Lev.* 107.

Trover againſt Baron and Feme for the Converſion of the Feme, they both plead Not guilty, where it ſhould be only *non cul.* for the Feme.

K **Trover** againſt Baron and Feme, ſuppoſing the Trover by both during the Coverture, and the Converſion by the Feme, they both plead Not guilty; whereas it ſhould be only, that the Feme is Not guilty, and held to be naught, and a Repleader ordered. *Cro. Eliz.* 883. *pl.* 17.

Where the Converſion is in the Time of the Inteſtate, he ſhall pay Coſts.

L **Trover** for Converſion of the Inteſtate's Goods, in the Time of the Plaintiff: And upon a Verdict adjudged, That the Converſion being in his own Time, was as his own proper Action, and ſhall pay Coſts. *Cro. Car.* 219. *pl.* 3. For he might have brought the Action in his own Name. 1 *Vent.* 92, *Latch.* 263.

A **Trover** *pro trecent. uvarum*, *Anglice* Currans, without the Word *ponderibus*, held good. 1 *Keb.* 523.

Pro trecent. uvarum Anglice Currans.

B **Trover** *pro mille menſuris*, *Anglice* Gallons, of *Rheniſh* Wine, is naught. 1 *Keb.* 516. *pl.* 100.

Pro mille menſuris vini, naught.

C **Trover** for Goods, *& aliis Utenſiliis*; and after a Verdict, Judgment was ſtayed for the Incertainty of *aliis Utenſiliis*, and *quot quanta & qualia* they are. 3 *Lev.* 18.

Trover for Goods, *& aliis Utenſiliis*.

D **Trover** for Bottles, and ſays not how many: *Et de Parcella lintea*, held naught. 2 *Lev.* 176. *De quadam Parcella fili*, held good in this Action, where Damages only are to be recovered, and not the Thing itſelf, as in Replevin or Detinue. 1 *Lev.* 303.

Trover for Bottles, and ſays not how many, naught.

And ſo *de Parcella Lintea*.

But *de quadam Parcella fili*, held good.

E **Where** there is a proper *Latin* Word for the Thing for which Trover is brought, if it be not uſed, the Declaration is naught. 2 *Lev.* 177.

Where there is a proper Word, it muſt be uſed in a Declaration.

F **Trover** *pro uno Gallo Fœni*, *Anglice* a Cock of Hay, held good, after a Verdict. *Tempore* Chief Juſtice *Pemberton*. See Title **Words**.

Trover *pro Gallo Fœni*.

G **Trover** for Goods, and ſets forth what they were, *Cum aliis implementis*; and of another Parcel, *cum aliis neceſſariis*, naught for Uncertainty. *Cro. Eliz.* 817. *pl.* 7. *Cro. Jac.* 129.

Trover for Goods, *cum aliis implementis*; naught after a Verdict, and intire Damages.

H **Trover** *pro decem capſis & ciſtis*, and ſays not how many of the one, and how many of the other, is naught, if *capſis* and *ciſtis* are ſeveral Things. *Cro. Eliz.* 818. *pl.* 12. *Cro. Jac.* 129.

Trover *pro decem capſis & ciſtis*, is naught.

I **Trover** for a Portal, and ſeveral other Things which ſeemed to be fixed; but ſaying *poſſeſſionatus fuit ut de bonis propriis*, the Court will intend them to be ſevered, unleſs the contrary be ſhewn by the Defendant. *Cro. Jac.* 129.

Trover for Things which ſeemed to be fixed, but yet good.

K **Trover** *de uno riſco*, *Anglice* a Trunk full of Linnen, *ad valenciam* twenty Pounds, *& de una pixide*, *Anglice* a Box full of Bands, Cuffs, and Shirts, *ad valenciam* ten Pounds, and divers other Things: Verdict for the Plaintiff, and intire Damages. But by three Judges againſt one, it was adjudged, That the Damages ſhall be intended to be given for the Trunk only. *Cro. Jac.* 664. *pl.* 18. 665. And after Error this Judgment was affirmed.

Trover *de uno riſco*, *Anglice* a Trunk full of Linnen; held good after Verdict.

L **In** Trover and Converſion, if ſome of the Words ſignify nothing, yet it is good after a Verdict; becauſe the Law will preſume that no Damages were given for thoſe Words which ſignified nothing. See *Roll's Abr.* 577. *pl.* 5. If there be no proper Word to expreſs the Thing for which the Action is brought, and the Thing is ſo deſcribed, that the Jury may know what is meant thereby, it is well enough. *Style* 136.

Where ſome of the Words ſignify nothing, it is good after a Verdict.

Trover for a Ship, & *apparat.* &c. held good after a Verdict.

A **Trover** for a Ship, *& apparat. Armament. Subpediment. & Proviſionibus*, and held good after a Verdict, although the Particulars were not ſet forth in the Declaration; becauſe it is ſuppoſed that the Particulars were given in Evidence to the Jury, and that they gave their Verdict for no more than there was proved. *Jac.* 2. *B. R.*

May declare generally.

B **In** Trover, the Plaintiff may declare upon a *devenerunt ad manus*, generally. 2 *Bulſt.* 313.

Or Specially.

C **Or** ſpecially, *per inventionem devenerunt*, though the Defendant came to the Goods by the Delivery of the Plaintiff. *Ibid.*

Ad valenciam left out of a Declaration, is aided by the Statute after a Verdict.

D **In** a Declaration in Trover there was no *ad valenciam*, and yet held good; for the *ad valenciam* in the Declaration is not Matter of Subſtance, and after Verdict it is aided by the Statute. *Cro. Jac.* 653. *pl.* 2. 654.

Lies for Money out of a Bag.

E **Trover** lies for Money, though not in a Bag, becauſe the Thing itſelf is not to be recovered, but only Damages for it. *Danv.* 20. *Letter* K. But ſee the Book, and *Quære*, Whether not in *quadam Baga exiſtente.* See *Cro. Car.* 89. *pl.* 11. That it well lies, without ſaying in a Bag; and that by all the Judges upon a Writ of Error.

Trover for a Bond, how to be brought.

F **Trover** for a Bond wherein *A.* and *B.* were obliged to the Plaintiff in ſixty Pounds, ſealed with the Seal of *A.* and *B.* *ut de ſcripto obligatorio ſuo proprio*, and demurred to, becauſe the Date is not mentioned; nor that it was delivered as their Deed. *Curia.* He needs not ſhew the Date, becauſe it is loſt, and the Defendant hath eſloined it. *Cro. Jac.* 683. And alſo he ſays, *ſcriptum obligatorium*, which ſhews the Delivery of it. See *Cro. Car.* 262. *pl.* 8.

For twenty Pieces of Wood.
For twenty Trees.
For a Parcel of Cloth.
For a Parcel of Wares.

G **Trover** *pro viginti peciis ſive parcellis ligni*, held good. So for twenty Trees, ſhall not be intended to be growing. So for a Parcel of Cloth; but not for a Parcel of Wares; for that is uncertain. 1 *Keb.* 508.

Lies for a Greyhound or Spaniel.

H **It** lies for a Spaniel Dog, or a Greyhound; for he is reclaimed. *Cro. Jac.* 463. *Hob.* 283.

Although there be a Redelivery after the Uſe, yet it makes a Converſion.

I **If** a Man takes my Horſe, and rides him, and afterwards delivers him to me, Trover lies againſt him; for this is a Converſion, and the Redelivery is no Bar to the Action, but ſhall be only in Mitigation of Damages. *Danv.* 21. *Letter* L.

What amounts to a Converſion in Law.

K **A Man** finds my Goods, (knowing them to be mine) and refuſes to deliver them to me upon Demand: This is a Converſion in Law, for the Denial makes him a Treſpaſſer *ab initio.* *Ibid.*

A The Plaintiff may chuſe to have his Action againſt the firſt Finder, or againſt any other who gets the Goods after by Sale, Gift, or Trover. 1 *Leon.* 183. Caſe 267.

Againſt whom Trover will lie.

B A Man puts out Cattle to Paſture at twelve Pence *per* Week, he then ſells them to the Plaintiff, the Plaintiff demands them, but he refuſed to let them go till paid for; Trover well lies, and the Defendant's Remedy muſt be by Action for his Money, and he cannot detain them for the Money; as in the Caſe of an Inn-keeper, or a Taylor. *Cro. Car.* 271. *pl.* 6.

Where a Man agiſts Cattle at twelve Pence *per* Week, he cannot keep the Cattle till he is paid for the Keeping; but muſt bring his Action for their Keeping. An Innkeeper, or a Taylor, may detain till paid.

C Trover for an Horſe, the Defendant pleads the General Cuſtom of *England* for keeping of him if he eats out his Head, and ſets forth the Cuſtom particularly: Upon a Demurrer adjudged for the Plaintiff, becauſe there is not any ſuch Cuſtom but only in *London* and *Exeter*: But an Hoſtler may detain an Horſe for his Meat, but he cannot uſe him. *Moore*, Caſe 1229.

An Innkeeper, except in *London*, cannot ſell an Horſe which hath eat out his Head. But he may detain him for his Meat.

D If I deliver Goods to a Common Carrier to carry to a certain Place, and the Goods are ſtolen from him: This is no Converſion in the Carrier, ſo as to charge him in Trover: But Caſe upon the Cuſtom of the Realm lies againſt him as a Carrier. 3 *Keb.* 422.

What is no Converſion in a Carrier.

But Caſe lies againſt him.

E Trover lies againſt Baron and Feme, ſetting forth in the Declaration, that they converted them to the Uſe of the Baron; for the Feme may be Treſpaſſer, and convert to the Uſe of her Huſband, or to the Uſe of a Stranger, but not to her own Uſe; neither can it be *quod ad uſum* of the Baron and Feme *converterunt*. *Danv.* 22. Nº 6. So if the Converſion be laid *ad uſum* of herſelf and Huſband, or *ad uſum proprium*, or *ad uſum ſuum converterunt*, it is naught. *Danv.* 23. Nº 7. *Cro. Car.* 494. *pl.* 2.

Trover againſt Baron and Feme.

How to be.

Cannot be *ad uſum eorum*.

F In Trover for a Bond, the Plaintiff need not ſhew the Date; for the Bond being loſt or converted, he may not know the Date; and if he ſhould ſet out the Date, and miſtake it, he would fail in his Action. *Cro. Car.* 262.

How to declare in Trover for a Bond.

G In Trover there is no Plea but Not guilty, or a Releaſe. 1 *Keb.* 305. *pl.* 16. *per Twiſd.* 318. *pl.* 44.

What Pleas muſt be pleaded in Trover.

H For Declarations in Trover, where good, where bad. *Danv. Abr.* 23, 24.

Declarations in Trover where good or bad.

I The Place of the Converſion muſt be mentioned in a Declaration in Trover, or elſe it is naught. *Cro. Eliz.* 78. *pl.* 39, and 97, 98.

The Place of the Converſion muſt be alledged.

K In the Declaration the Converſion was laid before the Trover. *Curia. Poſtea convertit* is ſufficient, and the *ſcilicet* ſuch a Day is void. *Cro. Jac.* 428. *pl.* 3.

Converſion laid before the Trover, how made good.

It lies not for an Hawk, unleſs reclaimed.

But Treſpaſs lies for Killing, though not ſet forth to be reclaimed.

A **It** lies not for a Hawk which is not reclaimed, which may be known by her Vervels, Bells, *&c.* But an Action of Treſpaſs will lie for Striking and killing of an Hawk, although not reclaimed. *Cro. Car.* 18. *pl.* 11. and 544. *pl.* 10.

No Day and Place of the Converſion ſhewn, and how help'd.

B **In** Trover it is ſaid, that ſuch a Day and Year he required him to deliver it, but he refuſed and converted it to his own Uſe; but ſhews no Day or Place of the Converſion. *Curia.* The denying to deliver it upon Requeſt is a Converſion, and the Day and Place are there alledged, which is ſufficient. *Cro. Car.* 262. *pl.* 8.

Againſt whom.

C **Trover** lies againſt a Carrier for Negligence, as for loſing a Box, *&c.* *Salk.* 655.

Where not.

D **But** not for an actual Wrong, as if he break it to take out the Goods, or ſell it. *Ibid.*

Denial no Evidence.

E *Ergo*, Denial is no Evidence of a Converſion, if the Thing appears to be loſt by Negligence. *Ibid.*

When it is.

F *Contra*, If that does not appear, or if he had it in his Cuſtody when he denied to deliver it. *Ibid.*

For what it lies not.

G **Trover** lies not for a Negroe. *Vide* Villeins. *Salk.* 666.

For what it does.

H **Trover** *de ſcripto ſuo obligatorio*, good. *Ibid.* 654.

Declaration good.

I **Trover** for twenty Ounces of Cloves and Mace, held well, tho' not ſhewn how much of each, or that they were mixed. *Ibid.*

Lottery Tickets.

K **A Goldſmith** has Lottery Tickets of *A.* and *B.* and delivers *A*'s Tickets to *B.* as his own, *A.* may have Trover againſt *B.* *Salk.* 283.

Motion to bring Part in Court.

L **In** Trover for a Horſe, Bridle and Saddle, a Motion was made to bring the Bridle and Saddle into Court; denied. *Ibid.* 597.

For Plate.

M **Trover** lies for Plate generally, ſo for 260 *peciis argenti.* *Ibid.* 219.

Plea.

N **Note,** Any ſpecial Plea in Trover ought to confeſs a Converſion. *Ibid.* 654.

Jointenants, and Tenants in Common.

O **One** Jointenant or Tenant in Common, or Coparcener, can't bring Trover againſt his Companion, but may againſt a Stranger. *Ibid.* 290.

Evidence.

P **See** alſo Evidence as to Trover. *Ibid.* 16, 32.

Converſion.

What ſhall be a Converſion, and what not. *Carthew* 103.

Declaration.

Q **Where** the Declaration is inſenſible. *Carthew* 131.

The like.

R **The** Declaration was general, as of *Michaelmas* Term, and the Converſion was laid on a Day certain in that Term, and yet good. 3 *Salk.* 9.

Where

A **Where** this Action will lie for a Dog. 3 *Salk.* 139.

For a Dog.

B **The** Converſion is the Giſt of the Action. 3 *Salk.* 366.

Converſion.

C **What** Plea is good in Trover, and what not. *Ibid.*

Plea.

D **Two** Co-Plaintiffs in Trover, one dies, the Survivor has Judgment in Error, the Judgment was reverſed. *Skin.* 39.

Surviving Plaintiff.

E **Trover** *de uno pari Vittarum, Anglice* a Suit of Knots, certain enough. *Ibid.* 142.

Certainty.

F **In** Trover againſt an Hackney Coachman, ruled that Goods delivered to his Servant, ſhall not charge the Maſter, for the Party does not pay the Maſter for it; otherwiſe if the Maſter be paid for it, or agree for it. *Ibid.* 625.

Againſt an Hackney Coachman.

G **In** Trover and in Actions for Damages, no Leave to bring the Thing taken into Court. *Mod. Caſes in Law and Equity* 176.

To bring the Damages into Court.

H **An** Action of Trover lies here for a Converſion in *Ireland*. *Mod. Caſes in Law and Equity* 322.

For a Converſion in *Ireland*.

I **For** the Plaintiff may lay the Converſion here, and prove 'twas done in *Ireland*; but this is otherwiſe in local Actions. *Ibid.*

The like.

K **In** Trover the Converſion is the Point in Iſſue, for which a certain Time and Place muſt be alledged. *Ibid.* 177.

Converſion.

L **See** for Trover for *South-Sea* Stock transferr'd to the Defendant, who perſonated the Plaintiff. *Ibid.* 9.

For *South-Sea* Stock.

Truſt.

See { **Leaſe, Leſſor, Leſſee.**
Uſe.

A Truſt, what.

A Truſt is a Confidence which one Man reposes in another; and if the Perſon entruſted either break his Truſt, or doth not perform his Truſt as he ought to do, the only Remedy is by Bill in Chancery. A

The Chancery will compel the Performance of a Truſt.

The Chancery will compel one to perform a Truſt which he hath taken upon him, except it be a Truſt taken upon him for the Benefit of an Alien: *Paſch.* 23 *Car. B. R.* For to compel that, might (in many Caſes) prove prejudicial to the Common Law, which neither Law nor Equity ought to compel. B

Conveyances in Truſt, why invented.

The Way of making Conveyances by Way of Truſt, was invented to evade the Statute of Uſes: *Paſch.* 23 *Car. B. R.* And is not ſo much favoured in Law as plain and direct Conveyances of Eſtates. C

Ceſtuy que Truſt cannot take the Profits of the Land, but hath his Remedy for them in Equity.

Ceſtuy que Truſt cannot take the Profits of the Land ſettled by the Truſt, but hath only his Remedy for them in Equity; for the Eſtate in Law in the Land is only in the Party that hath the Truſt: *Trin.* 23 *Car. B. R.* And the Law takes no Notice of the Truſt, *&c.* D

A Truſt, and a Uſe, at the Common Law are the ſame Thing. 27 **H.** 8. **cap.** 10.

A Truſt was an Uſe before the 27 *H.* 8. *cap.* 10. A Truſt and an Uſe at Common Law are both one. *Lutw.* 824. E

How it is in the Caſe of a Truſt.

Now the Uſe by the Name of Truſt, which were one and the ſame before the Statute of Uſes, remains ſeparately in ſome Perſons, and the Poſſeſſion ſeparately in others, as it did before the Statute, and are not brought together but by a Decree in Chancery, or the voluntary Conveyance of the Poſſeſſor of the Land to *Ceſtuy que Truſt*. *Vaugh.* 50. F

All

A **All** Aſſignments of Truſts, and alſo Declarations and Creations of Truſts, of any Lands, Tenements or Hereditaments, ſhall be in Writing ſigned by the Party enabled to declare ſuch Truſt, or by his Will, or elſe to be void. Statute of *Frauds*, 29 *Car.* 2. *cap.* 3. *Note*, The Law is now altered in this Caſe by the Statute 4 & 5 *Annæ*, which ſee in Title **Uſes**.

How Aſſignments of Truſts, and Declarations of Truſts and Uſes, ſhall be.

29 **Car.** 2. **cap.** 3.

4 & 5 **Annæ**.

B **Proviſo,** That this ſhall not extend to reſulting Truſts, or Truſts by Implication of Law.

Proviſo not to extend to reſulting Truſts, or by Implication.

C **Execution** may be ſued, and the Lands of *Ceſtuy que Truſt* delivered thereupon, where any Perſon is ſeiſed or poſſeſſed in Truſt for another, by the Statute of *Frauds*, *&c.*

Lands of *Ceſtuy que Truſt* liable to an Execution upon a Judgment againſt him.

D **There** is an Act made 7 *Annæ*, intituled, *An Act to enable Infants who are ſeiſed or poſſeſs'd of Eſtates in Fee, in Truſt, or by Way of Mortgage, to make Conveyances of ſuch Eſtates.* See the Act in Title **Infant.**

An Act to enable Infants to convey Eſtates in Truſt, whereof they are ſeiſed or poſſeſs'd.

7 **Annæ**.

E **If** an Huſband makes a Leaſe for Years in Truſt for his Wife, this is voluntary; and if he ſells it, it binds the Wife: But where a Truſt is created for a Wife, *bona fide*, the Huſband cannot ſell it, unleſs where ſhe is examined as in a Fine. *Chanc. Rep.* 307, 308.

Where the Huſband may diſpoſe of a Truſt ſettled upon his Wife, and where not.

F **A Truſt** of a Term ſhall be forfeited to the King for Felony, and the Truſtees ſhall be compelled in Equity to aſſign over the Reſidue of the Term, and Rent to the King: But a Truſt in a Freehold is not forfeited by Treaſon. *Cro. Jac.* 512. *pl.* 23, 513.

A Truſt of a Term is forfeited to the King for Felony.

A Truſt of a Freehold is forfeited for Treaſon.

G **A Man** makes two Truſtees for an Infant, *A.* and *B.* who both accept the Truſt: *A.* one of them, takes all the Profits, and was in Arrear one Thouſand Pounds, and unable to ſatisfy: And it was reſolved, That *B.* being only a Party intruſted, ſhall not be anſwerable for more than came to his Hands; for it was the Fault of him who repoſed a Truſt in ſuch a Man who was not able to pay. *Cro. Car.* 312. *pl.* 3.

Two Truſtees, one of them receives all, and becomes inſolvent, the other ſhall anſwer for what only came to his Hands.

H **The** Father joins his Son with him in the Purchaſe of an Eſtate; it ſhall not be preſumed to be a Truſt in the Son, unleſs expreſly declared. *Chanc. Rep.* 28, 296.

Father and Son Purchaſors no Truſt, unleſs expreſly declared.

I **The** Father purchaſes in the Name of a Son unadvanc'd; it is an Advancement for the Son, and not a Truſt for the Father. *Ibid.* 296.

The Father purchaſes in the Name of an unadvanc'd Son, this is an Advancement for him.

Where a Fine or Recovery ſhall bar a Truſt.

A Fine and Recovery of *Ceſtuy que Truſt*, ſhall bar and tranſfer a Truſt, as it ſhould an Eſtate at Law, if it were upon a Conſideration. *Chanc. Rep.* 49. See 68, 213. But not a Remainder. A

How a Fine and Non-claim binds all Truſts and Equity.

A Fine and Non-claim bars all Truſts and Equity, upon theſe two Diverſities. B

1. **Where** the Equity charges the Land, the Fine bars; but when it charges the Perſon, in Reſpect of the Land, it doth not. C

2. **If** the Equity or Truſt be created by the Fine, that Fine ſhall never bind the Equity which it created. *Chanc. Rep.* 278. D

How the Truſt of a Term ſhall veſt where there are ſeveral Remainders.

Where the Truſt of a Term is to one for Life, the Remainder for Life, Remainder to a third Perſon, if he out-live the Tenant for Life, the Remainder to another, and his Heirs; that the Remainder to the third Perſon, he dying before Tenant for Life, doth not veſt it in his Executor. *Chanc. Rep.* 131, 132. E

Where a Truſt to pay Portions out of the Rents and Profits, gives the Truſtees Power to ſell.

A Truſt to pay Portions out of the Rents and Profits at a prefix'd Day, gives the Truſtees Power to ſell. *Ibid.* 176. F

A Truſtee that pays Debts to the Value of the Lands, becomes a Purchaſor.

Where a Truſtee for Sale of Lands for Payment of Debts, pays Debts to the Value of the Lands, he thereby becomes a Purchaſer himſelf. *Chanc. Rep.* 199. G

A remote Truſt of a Term is a void Limitation.

A remote Truſt of a Term which tends to a Perpetuity, is a void Limitation. *Ibid.* 230. H

A Termor grants in Truſt for himſelf, to his Wife, for Life, *&c.* good; but if Heirs of their Bodies, not.

A Termor grants in Truſt for himſelf for Life, for his Wife for Life, and after to his Children for their Lives, and after to *J. S.* this Truſt to *J. S.* is good; but had it been Heirs of their Bodies, not *Ibid.* 239. I

What no Breach of Truſt.

Where there is Tenant for Life, Remainder to Truſtees to ſupport contingent Remainders, Remainder to the firſt and other Sons of the Marriage, Remainder to the Heirs of the Body of the Huſband, if after any Probability of Iſſue to take, the Truſtees convey to the Huſband, and this be for the good of the Family, ſaid to be no Breach of the Truſt. *Skinner* 78. K

29 **Car.** 2.

Are to be declared in Writing ſigned by the Party by Statute 29 *Car. 2.* *Mod. Caſes in Law and Equity* 72. L

For Deviſes of Lands, *&c.* in Truſt. See Title **Deviſe.** *Ibid.* 122. M

A **Where** one inſiſted on an abſolute Gift; but it appeared to be in Truſt. *Mod. Caſes in Law and Equity* 113.

Where a Truſt, and not a Gift.

B **Where** the Heir ſhall have the Land as a Reſulting Truſt, notwithſtanding a Deviſe. *Ibid.* 122.

Reſulting Truſt.

C **Where** Lands given in Truſt ſhall be deemed as Money or not. *Ibid.* 171.

Land given in Truſt.

D **If** the Truſtee of a Term commits Treaſon, in Strictneſs of Law the King ſhall have it; but uſually he grants it to *Ceſtuy que Truſt* upon Petition. **Comberbach** 172.

Truſtee commits Treaſon.

E **Where** the Father and Son join in a Purchaſe, it ſhall be intended for the Advancement of the Son; and that he is not a Truſtee. 3 *Salk.* 367.

Son not a Truſtee.

F **Where** a Truſt is to raiſe Money out of the yearly Profits, in ſuch Caſe the Lands cannot be ſold to raiſe the Money, unleſs it was to be paid on a certain Day before it could be received out of the Profits. *Ibid.*

Where Lands are not to be ſold on a Truſt erected.

Vagrants and Vagabonds.

G SEE the Act made 39 *Eliz. cap.* 4. *For the puniſhing of Rogues, Vagabonds, and ſturdy Beggars.* And alſo another Act, *For the Continuance and Explanation of the ſaid Act,* made 1 *Jac.* 1. *cap.* 7.

An Act for the Puniſhment of Rogues, Vagabonds, and ſturdy Beggars, calling themſelves *Egyptians.*

39 **Eliz.** cap. 4.
1 **Jac.** 1. cap. 7.
14 **Car.** 2. cap. 12.

H **See** the Act made 5 *Eliz. cap.* 20. intitled, *An Act for further Puniſhment of Vagabonds, calling themſelves* Egyptians; where it is enacted, That the Statute of the 1 & 2 *P. & M. cap.* 5. ſhall remain in Force. And alſo,

Act for Puniſhing of Vagabonds, calling themſelves *Egyptians.*

1 & 2 **P. & M.** c. 5.
5 **Eliz.** cap. 20.

I **That** it ſhall be Felony for any Perſon keeping Company with, or diſguiſing himſelf as *Egyptians*, to remain a Month in this Kingdom.

K **Note,** This is not to extend to any Child, or Children, under the Age of fourteen Years.

What to be done with Vagabond Beggars.

11 & 12 W. 3. cap. 18.

The Juſtice to correct or ſend them out of the County.

Certificate, and a Tax upon it for the Charges.

Who is to pay it.

A Vagabond Beggars brought to a Conſtable with a Paſs, or other Writing, ſhall be had before a Juſtice of the Peace and examined, who is to examine them; and if he finds them Perſons who ought to be puniſhed, he is then to ſend them to the Houſe of Correction; and if they be not ſuch Perſons, then to be conveyed out of the County, to ſuch Town in the next County as ſuch Juſtice ſhall think moſt proper, by the Conſtable, or other Officer; and the Juſtice is to give the Conſtable a Certificate without Fee, in what Manner it ſhall be done, and ſhall tax on the Back of the Certificate an Allowance for his Trouble and Charges, to be paid out of the Gaol and *Marſhalſea* Money; and if that be not ſufficient, the Juſtices at their Quarter-Seſſions may raiſe it as they do for Gaols and Bridges: The Juſtice's Certificate to be carried by the Conſtable to the Conſtable of the Hundred, who is to pay it out of the Gaol Money.

Nothing to be charged to the Inhabitants.

B The Petty Conſtable ſhall not charge the Inhabitants with any Thing for conveying of Vagabonds.

The Penalty upon the Conſtable in not doing of his Duty.

C The Penalty of every Conſtable not doing of his Duty is twenty Shillings, *viz.* one fourth to the Informer, and the reſt to the Poor of the Pariſh, to be levied by Diſtreſs, and Sale of the Goods, by Warrant under the Hand and Seal of one Juſtice, who is to determine the Offence by one Witneſs.

5 Annæ.

D This Act was temporary, but continued for ſeven Years: 5 *Annæ*, *Seſſ.* 2. And from thence to the End of the next Seſſion of Parliament.

Where Money is wanting, the Seſſions may lay it upon the County.

E And by that there is (where Money is wanting to pay the Allowances) a Power given to the Juſtices, at their Quarter Seſſions, to aſſeſs upon every Town within their Commiſſions, ſuch Money as they ſhall think fit to allow for his Loſs of Time and Expences, to be collected, as the Money for the Repair of County Bridges is.

An Appeal may be by a Pariſh to the Seſſions upon a Conſtable's Rate.

F All Pariſhes may appeal to the Seſſions upon the Unreaſonableneſs of all Conſtables Rates.

Valuation.

A A Jewel is not valuable in Law, but only according to the Valuation of the Owner of it, and is very incertain. *Hill.* 21 *Car. B. R. Qu. tamen.* For it ſeems there is a certain Value for Pearls and Diamonds amongſt the Merchant Jewellers, according to their Weight, Bigneſs, and Luſtre, although they may riſe and fall in their Prices, as other merchantable Commodities do, according to the Plenty and Scarcity of them, and the high or low Eſteem they may be at in ſome Times above others.

A Jewel is not valuable in Law.

B If one declare in an Action of Treſpaſs for the taking away of live Cattle, or one particular Thing, he ought to ſay, That he took away his Cattle, or other Thing, *pretii* ſo much; but if he declare for taking away of Things without Life, he ought to ſay *ad valentiam* of ſo much: *Mich.* 1649. *B. S. Qu. Differentiam inter pretium & valentiam*, or Price and Value. It ſeems to be, that live Cattle are to be prized at ſuch a Price as the Owner of them did in his Account eſteem them to be worth, which is incertain; but dead Things are to be reckoned at the Value of the Market, or as others would give for them, which may be certainly known: But I rather think that the Reaſon of the Difference between *pretii* and *ad valentiam*, is from the Rule in the *Regiſter of Writs*, which ſhews it to be according to the antient Forms of the Law, which ought always to be obſerved.

When one ought to declare *pretii* ſo much; and when *ad valentiam*.

Difference between Price and Value.

C The Value of the Church ſhall be taken and computed according to the Value in the King's Books, and not the real Valuation thereof. *Lutw.* 1304.

How the Value of the Church ſhall be taken to be.

D But in *Cro. Eliz. fol.* 853. *pl.* 12. the Court ſaid, That they took not Conuſance of the Value in the Queen's Books, but regarded only the true Value, *Ideo Quære.*

Whether by the Queen's Books, or true Value.

Variance.

Variance, what.

A **Variance is where the Count varies from the Writ, or from the Deed, upon which the Count is grounded.**

Variance between Matter pleaded, and Manner of pleading it.

B **If** there appear to be a material Variance between the Matter pleaded, and the Manner of the Pleading of it, this is not a good Plea: *Paſch.* 24 *Car. B. R.* For the Manner and Matter of a Pleading ought to agree in Subſtance; elſe there will be no Certainty in it.

The Writ was *Ceperunt Averia*, and the Count was for taking of a Mare, and naught.

16 & 17 Car. 2. c. 8.

C **The** Writ was *Ceperunt Averia*, and the Count for taking of a Mare, and held naught, being upon a Demurrer. *Lutw.* 1181. *Treby* Chief Juſtice, in another Caſe ſaid, That Variance between the Writ and Count after Verdict, was aided by the *Oxford* Act. 16 & 17 *Car.* 2. *cap.* 8. *Lutw.* 1181.

A little Variance between the Declaration and Bond, ſhall not hurt the Declaration.

D **A little** Variance between the Declaration and Bond, ſhall not make the Declaration naught. 3 *Lev.* 66.

Quantoginta in the Bond, and *Quinquaginta* in the Declaration, naught upon a Demurrer.

E *Quantoginta* in the Bond, and *Quinquaginta* in the Declaration, was upon a Demurrer held to be naught for Variance and Inſenſibility. 2 *Lev.* 166.

In a *Quare Impedit*, the Writ is always general, but the Count muſt be Special.

F **Variance** pleaded between the Writ and Count in a *Quare Impedit*, the Count ſays the King ought to preſent by his Prerogative, which is not mentioned in the Writ. *Curia.* The Writ is always general. 3 *Lev.* 377.

Variance between the Suggeſtion and Declaration makes all naught.

G **A Suggeſtion** for a Prohibition is as a Writ, ſo that if there be a Variance between it and the Declaration, all is naught. 1 *Leon* 128. *Caſe* 175.

Variance between Writ and Declaration is Error.

H **Where** there is a Variance between the Writ and Declaration, it is Error. *Cro. Jac.* 479. *pl.* 3.

How it is where two Originals are certified.

I **Where** the Plaintiff in the Errors certifies one Original, and the Defendant in Errors another, which is good: That ſhall ſtand, and not the other. *Cro. Jac.* 597. *pl.* 20.

A **Where** there is a Variance between the Writ and Count, one being *ad dampnum* for forty Pounds, and the other *ad dampnum* for one Hundred Pounds, and but twelve Pence Damages given: This not being in Matter of Subſtance, or in Point of Judgment, it was held to be well enough. *Cro. Jac.* 629. *pl.* 2.

Where a Variance between the Writ and Count ſhall not hurt.

B **Variance** between the Writ and Count not pleadable, *ſans* praying *Oyer* of the Writ. *Salk.* 658.

Oyer.

C **Variance** between the *Scire Facias* and Judgment, not amendable, tho' the Writ not faulty in *ſe. Ibid.* 52.

Not amendable.

D **Deed** dated in the Year of our Lord only, and ſet forth with the Year of the King alſo, no Variance. *Ibid.* 658.

What no Variance with the Date.

E **So** a Bond to *A.* in 40 *l. ſolvend'* to his Attorney, declar'd on as payable to *A.* no Variance. *Ibid.* 659.

With Bond.

F **So** in Debt on Bond to perform Award, Omiſſion in the Replication of a void Part of the Award is no Variance. *Ibid.* 72.

On an Award.

G *Aliter*, If the Omiſſion be of any Part, not void. *Ibid.*

H **In** Debt where the Quantity of the Duty depends on the Deed, a Variance is fatal, and can't be help'd by a *Remittitur*. *Ibid.* 658.

In the Quantity.

I *Aliter*, Where the Matter is extrinſick, and does not depend on the Deed. *Ibid.*

K **Recognizance** in *C. B.* taken at a Judge's Chamber, pleaded as taken in Court, is a Variance. (*Vide* **Recognizance.**) *Ibid.* 659.

Recognizance.

L **If** Error abates by Motion, the Court muſt be moved for Execution, *contra*, if for Variance. *Ibid.* 264, 265.

Error.

M **Writ** of Error was of a Record *per Billam*, the Record return'd was *per breve de Privilegio*, and quaſh'd. *Ibid.* 660.

The like.

N **Information** for a Libel, Variance in the Word *Nor* for *Not*, held fatal upon Evidence. *Ibid.*

Information.

O **In** declaring for Words ſpoken, a Variance in the Omiſſion or Addition is not material if the Words prov'd are actionable. *Ibid.* 661.

In Declaration for Words.

P **But** otherwiſe in a Tenor of Words written. *Ibid.*

Q **And** in pleading, a Libel may be ſet forth (*in hæc Anglicana verba*) in *Engliſh*, or the Senſe and Subſtance of it. *Ibid.*

On a Libel.

Amendment.

A **See** a Variance between a Writ of Error and a Record, and refuſ'd to be amended, though the Curſitor's Note was Right. *Salk.* 49.

The Name of a Corporation.

B **See** alſo a Variance between the Writ and Return in the Name of a Corporation. *Salk.* 434.

Of a Pariſh.

C **And** ſee a Variance in the Name of a Pariſh, *Waking* and *Woking*. *Salk.* 472.

What a Variance material.

D **Variance** a Writ of Error on a Judgment in *Curia noſtra*, (*viz.*) *Jac.* 2. when all the Proceedings were in the Reign of *Car.* 2. this is an incurable Variance. *Carth.* 152, 158.

In the Declaration.

E **Judgment** reverſed for a Variance in the Declaration. *Ibid.* 293.

How the Agreement.

F **Variance** between the Special Agreement and the Declaration. *Ibid.* 323.

Variance upon *dimiſit.*

G **Caſe** upon a Demiſe of an Houſe for ſeven Years, in which the Defendant negligently kept his Fire upon *Non dimiſit modo & forma*, the Jury found the Demiſe, excepting that Part call'd the New Houſe; now by this Exception the Leſſee was Tenant at Will of the New Houſe, and ſo it was not demiſed to him for ſeven Years: And for this Variance the Defendant had Judgment. *Ibid.* 203, 204.

Amendable.

H **Where** 'tis Amendable by the Statute 16 & 17 *Car.* 2. 3 *Salk.* 368.

In the Writ.

I **Where** 'tis between the Writ and the Declaration it is ill. *Ibid.* 368, 370.

Writ of Error.

K **Where** 'tis between the Writ of Error and the Record certified. *Ibid.* 369.

Upon a *Sci. Fa.*

L **Where** on a Writ of Error on a Judgment in a *Sci. Fa.* on a Recognizance againſt the Bail, it was in *adjudicatione executionis judicii* inſtead of *Recognitionis*, 'tis ill. *Ibid.*

Et inſtead of *Aut.*

M **Where** in the *Sci. Fa.* the Copulative *Et* was put inſtead of *Aut*, adjudged ill. *Ibid.*

N **In** Error here from the King's Bench in *Ireland*, on a Libel for a Prohibition in a Suit for Tithes; a Variance was pleaded between the Libel and the Plea, but over-rul'd. (*Vide* **Plea.**) *Mod. Caſes in Law and Equity* 1, 2, *&c.*

Between Original and Declaration.

O **Variance** between the Original and Declaration alledg'd 'twas Right, only the N° Roll miſtaken, and therefore Judgment affirmed. *Ibid.* 243.

P **A Man** is not indictable for being a Vagrant. 3 *Salk.* 208.

Venire

Venire Facias de novo.

See Verdict.

A A Venire Facias de novo, is where the Verdict is imperfect, and comes not up to the Issue.

Venire Facias de novo, what.

B In Treſpaſs upon a Cloſe abutting upon *Gray's-Inn-Lane*, inſtead thereof it was made *Graves-End-Lane*, and thereupon the Plaintiff was nonſuited: But for that the Paper-Book and Roll were right, they ſet aſide the Nonſuit, and awarded a *Venire Facias de novo. Cro. Jac.* 669. *pl.* 8. And the Iſſue was tried, and found for the Plaintiff.

Where a Nonſuit upon a Miſtake in the *Niſi Prius* was ſet aſide, and a *Venire Facias de novo* awarded.

Ventre Inſpiciendo.

C This is a Writ in the Regiſter which the Law hath provided for the Benefit and Safety of Right Heirs, contra Partus Suppoſititioſos: It is ſued out of Chancery, and is returnable in the Common Pleas. The Writ you may ſee in the Regiſter: Fol. 227. a. where there is alſo this following Rule, viz. Nota ſi quis habens Hæreditatem duxerit aliquam in Uxorem & poſtea moriatur ille ſine Hærede de Corpore ſuo exeunte, per quod Hæreditas illa Fratri ipſius defuncti deſcendere debeat, & Uxor dicit ſe eſſe prægnantem de ipſo defuncto cum non ſit, habeat Frater & Hæres breve de Ventre inſpiciendo.

What it is.

Where it lies, and the Nature of it.

Where the Woman pretends to be with Child.

Where the Heir at Law ſhall have it.

Alſo it ſeemeth by *Bracton*, and *Fleta* who followeth him, that this Writ lies, *Ubi Uxor alicujus in vita viri ſui ſe pregnan' fecit cum non ſit, vel poſt mortem viri ſui ſe prægnantem fecit cum non ſit, ad Exhæredationem veri Hæredis & ad Querelam veri Hæredis per Præceptum Domini Regis, &c.* which is to be underſtood according to the Rule of the Regiſter: Where a Man having Lands in Fee-ſimple or Fee-tail, dieth, and his Wife ſoon after marrieth again, and feigns herſelf with Child by her former Huſband: In this Caſe, though ſhe be married, the Writ *de Ventre Inſpiciendo* doth lie for the Heir againſt her; and in *Eaſter* Term, 29 *Eliz. Ro.* 1250. *Cro. Eliz. fol.* 566. this Writ was ſued out of the Chancery into the Court of Common Pleas, at the Proſecution of one *Percival Willoughby*, who had married the eldeſt of the five Daughters of Sir *Francis Willoughby*, who died without any Son, but left a Wife, who at the Time of his Death pretended herſelf to be with Child by Sir *Francis*; which if it were a Son, all the five Siſters ſhould thereby loſe the Inheritance deſcended unto them. Which Writ was directed to the Sheriffs of *London*, whereby they were commanded to cauſe the ſaid *Dorothy* to be viewed by twelve Knights, and ſearched by twelve Women, in the Preſence of the twelve Knights: *Et ad tractandum per Ubera, & ad Ventrem inſpiciendum*, whether ſhe were with Child, and to certify the ſame to the Court of Common Bench; and if ſhe were with Child, to certify for how long, in their Judgments, *Et quando ſit paritura*; whereupon the Sheriffs accordingly cauſed her to be ſearched, and returned, That ſhe was twenty Weeks gone with Child; and that within twenty Weeks more, *fuit paritura*. Whereupon another Writ iſſued out of the Court of Common Bench, commanding the Sheriffs ſafely to keep her in ſuch an Houſe, and that the Doors ſhould be well guarded; and that every Day they ſhould cauſe her to be viewed by ſome of the Women named in the Writ (wherein ten were named) and when ſhe ſhould be delivered, that ſome of them ſhould be with her to view her Birth, whether it be Male or Female, to the Intent that there ſhould not be any Falſity. And upon this Writ the Sheriffs returned, That accordingly they had cauſed her to be kept, and that ſuch a Day ſhe was delivered of a Daughter. A

An Inſtance where the Writ was ſued out againſt the Widow.

Note, Thoſe twelve Knights are Freeholders.

The Sheriff's Return.

Another Return that ſhe was delivered of a Daughter.

Another Inſtance where the Woman married ſoon after her firſt Huſband's Death, the Heir ſues out the Writ.

Afterwards, in one *Theaker*'s Caſe: *Paſch.* 22 *Jac. Cro. Jac.* 685. *B. R.* The Huſband died the 15th of *Feb.* 1623. and his Wife *Mary* was married again within a Week: Whereupon the Couſin and Heir of the deceaſed Huſband (which Huſband had no Iſſue living at the Time of his Death) procured out of the Chancery a Writ *de Ventre Inſpiciendo*, of the ſaid *Mary*, directed to the Sheriffs of B

The Sheriffs Return.

A ſecond Writ granted.

of *London*, to cauſe the ſaid *Mary* to be ſearched, whether ſhe were with Child by the ſaid *William Theaker*, *Et quando fuit paritura* (no Mention being made of the ſecond Marriage.) And this Writ was according to the Precedent of 39 *Eliz.* abovementioned. And this Writ was returnable alſo in the Common Bench: And the Sheriffs returned, That they had cauſed her to be ſearch'd, and return'd the Inquiſition, That by ſuch Perſons they cauſed her to be ſearched, and found her to be *Enſeint*, *& quod fuit paritura* within twenty Weeks. Wherefore he now prayed a Second Writ out of this Court, to be directed to the Sheriff of *Surrey*; becauſe ſhe was removed with her Huſband to *Wandeſworth* in *Surrey*, and there inhabited: That the Sheriff might take her into his Cuſtody, and keep her 'till ſhe were delivered of her Child, that there might not appear to be any falſe or ſuppoſititious Birth; and that in the Interim he ſhould cauſe her to be viewed every Day by certain Matrons named in the Writ by the Court; and that ſome of them ſhould be at the Birth of the Child, according to the ſaid Precedent of the 39 *Eliz.* But becauſe in that Caſe of 39 *Eliz.* the Lady was a Widow, and ſo ſuch a Courſe might well be obſerved: But here ſhe is a Feme-Covert, who ought to cohabit with her Huſband; therefore they would not take ſuch a Courſe with her; but left her with him, he entering into Recognizance, That ſhe ſhould not remove from the Houſe wherein they then inhabited; and that one or two of the Women returned by the Sheriff, ſhould ſee her every Day; and that two or three of them ſhould be preſent at her Travail. For it was ſaid, That this Iſſue might be well ſaid to be the Child of the firſt Huſband, and ſhould inherit his Land: So that if there were any falſe or ſuppoſititious Birth, the Couſin and Heir might be diſinherited. Wherefore a Writ was accordingly awarded to the Sheriff of *Surrey*, to cauſe her to be ſeen every Day, until her Delivery, by two at leaſt of the ſaid Women returned by him; and that three of them, or more, ſhould be preſent with her at her Delivery, ſo that no Falſhood might be in her Birth.

A *Note*, After this Courſe obſerved, ſhe was delivered of a Female Child; who was afterwards by Inquiſition found to be the Daughter and Heir of the ſaid *William Theaker*, deceas'd.

Venue and Venire Facias.

See { Aſſignee. Challenge. Declaration. Debt. } { Jeofails. Iſſue. Jury. Trial. }

Venue, what.

A Venue, which comes de Vicineto, viz. the Neighbourhood, is the Place from whence the Jury are to come, to try the Cauſe which ariſes in the Neighbourhood.

Venire Facias, what.

B Venire Facias is a Writ which is awarded for the ſummoning of a Jury of the Neighbourhood, to try an Iſſue joined of a Matter of Fact triable per Pais, viz. by the Country.

Plaintiff in tranſitory Actions ſhall not alter his *Venue* after Eſſoin-day of the Term after Appearance.

C In tranſitory Actions, the Plaintiff, after the Eſſoin-day of the ſubſequent Term after the Appearance ſhall not alter his own *Venue*, though he would pay Coſts, or give Imparlance, *per Magiſtrum Liveſay, & al. &c. Paſch.* 21 *Car.* 2.

The *Venire Facias* ought to be out of the Neighbourhood.

D A *Venire Facias* ought to be *de aliquo vicineto*, that is, Neighbourhood; and therefore if the Writ of *Venire* do ſay *Venire facias homines burgi*, it is not a good *Venire*, for it ought to be *Venire facias homines de burgo*: 21 *Car. B. R.* It ſeems *homines burgi*, may be any Perſons whatſoever that live in a Borough or Corporation; and that *homines de burgo* is meant ſuch Men only that are not only Inhabitants there, but are alſo Members or Freemen of the Borough or Corporation.

If a Special Verdict be imperfect, there muſt be a new *Venire*.

E If a ſpecial Verdict be imperfect in Matter of Subſtance, there muſt be a new *Venire*, that there may be a new Verdict found, becauſe the ill Verdict doth not give the Court Power to judge of the Matter in Law; and ſo it is alſo if a Demurrer upon an Evidence be not good: By *Rolle, Mich.* 22 *Car. B. R.* and *Trin.* 23 *Car. B. R. Quære*, For if the Matter upon the Special Verdict be not well found, or the Demurrer be not well joined, the Matter in Law can never come in Queſtion.

Motion to change the *Venue* deny'd.

A **Upon** a Day given upon a Rule to ſhew Cauſe why a new *Venire* ſhould not be granted, it was moved that the *Venue* might alſo be changed, but denied; for by *Glyn* Chief Juſtice, This would be to make a new Record, and not to try the Iſſue, as the Court did intend. In the Caſe of *Studder* Plaintiff, and *Elliſton* Defendant, in a Trover and Converſion. *Hill.* 1655. 23 *Jan.* *B. S.*

A *Venire facias* when filed, may not be altered without Conſent.

B **A** *Venire facias* that is filed, cannot be altered without the Conſent of the Parties: *Mich.* 22 *Car.* *B. R.* For the filing of it doth make it a Record, which all Parties are bound by.

Where the Defendant, where he knows not of the Jury, is without Remedy.

And where he ſhall have a new Trial.

C **At** a Trial at the *Niſi Prius*, the Plaintiff changed the *Venire facias*, and Panels, and had a Jury the Defendant knew not of; and held, That the Defendant cannot be aided, if the firſt *Venue* was not filed: *Raym.* 79. And a Difference taken when the firſt *Venire* was not filed; there he cannot be aided, becauſe the Defendant may have Reſort to the Sheriff, and have a View of the Panel, to be prepared for his Challenges: But if the firſt *Venue* was filed, then the Defendant ſhall have a new Trial: By *Twiſden* Juſtice, and all the Clerks. *Ibid.*

Whence the *Venue* muſt be in Treſpaſs and Ejectment.

D **In** an Action of Treſpaſs and Ejectment, the *Venue* ought to be from the Vill or Hamlet, where the Lands in Queſtion do lie; and if the Lands lie in no Vill or Hamlet, the *Venue* ought to be *de corpore Comitatus*, that is, from the Body of the County: *Mich.* 22 *Car.* *B. R.* For where a more particular Place may not be found, a more general muſt ſerve the Turn, rather than the Cauſe ſhould not come to a Trial, and ſo be a Failure of Juſtice.

In what Caſes the Judges may alter the *Venue* in tranſitory Actions.

E **The** Judges may in all tranſitory Actions alter the *Venue* from the Place, whence by the Law it ought otherwiſe to be, if they believe there cannot be an indifferent Trial in the County where the *Venue* was firſt laid: *Mich.* 22 *Car.* *B. R.* By reaſon of the great Power that one Party hath in the County, or for ſome other Cauſe; for the Judges are bound, as much as in them lies, to ſee that equal Juſtice be done betwixt all Parties.

Where the *Venire facias* muſt be ſpecial.

F **In** all Caſes where there is to be a Special Jury, there the *Venire facias* muſt be Special: *Mich.* 22 *Car.* *B. R.* For ordinary Forms are not applicable to extraordinary Proceedings.

And where general.

G **If** the Matter to be tried be within divers Places in one and the ſame County, the *Venire* ſhall be general; but if the Matter be in divers Counties, there the *Venire* ought to be ſpecial: *Mich.* 22 *Car.* *B. R.* For the general Form of a *Venire* doth not warrant to return a Jury in one Cauſe out of divers Counties; but in ſuch Caſes to prevent a Failure of Juſtice, the Court hath Power to vary from the old Forms, and to direct ſuch a ſpecial *Venire.*

The Intention of the Words of the Stat. 21 Jac. cap. 13.

A The Words of the Statute of 21 *Jac. cap.* 13. are by reaſon the *Viſne* is ſued out of more Places, or of fewer Places than it ought to be, ſo as one Place be right named, are to be intended when ſome of the Places are named in the Record: *Raym.* 67. And therefore if an Action be laid in *D.* and a *Venire facias* iſſues *de corpore Comitat'*, there although the *Venire* be awarded to more Places, yet it is not good, becauſe the Body of the County was not named before in the Record. *Ibid.*

Judgment ſtayed for Want of *Viſne*.

B Where Judgment was ſtayed for want of a *Viſne*. *Ibid.* 187.

Where the *Venue* muſt be *de corpore Comitatus*.

C Where a certain Place cannot be known whence the *Venue* ſhould be, the *Venue* is to be *de corpore Comitatus*, and ſo it is where a Cuſtom of the County is to be tried; for the Cuſtom runs through the whole County: *Hill.* 22 *Car. B. R.* And therefore may be indifferently tried by Jurors returned from any Part of the County.

When it cannot be altered without Conſent.

D After a Plea pleaded, and an Iſſue joined in the Cauſe, the *Venue* cannot be altered, except the Parties conſent to it; for by the Pleading and Joining in the Iſſue, both Parties did impliedly agree to the *Venue*, as it was laid: *Hill.* 22 *Car. B. R. Paſch.* 24 *Car. B. R.* and *Trin.* 24 *Car. B. R.*

Venue laid in a foreign County, and Parties proceed to Iſſue, the Court will not change the *Venue*.

E If the *Venue* be laid in a foreign County, and the Parties proceed to Iſſue in the Cauſe, the Court will not change the *Venue* afterwards, although the Defendant would try the Iſſue afterwards by Proviſo: *Paſch.* 23 *Car. B. R.* For the Trial by Proviſo muſt be upon the old Iſſue, and the Pleadings are not to be altered.

If Verdict be imperfect there muſt be a new *Venire*.

F Where the Verdict is imperfect, ſo that the Judgment cannot be given upon it, there muſt be a new *Venire facias* to try the Cauſe: *Mich.* 23 *Car. B. R.* For the former Trial is to no Purpoſe, but Judgment cannot be given upon it, and the Plaintiff hath not the Effect of his Suit.

Viſne laid for the firſt Matter, all that follows refers to it.

G Where when the *Viſne* is laid for the firſt Matter in the Count, all the Matter which follows refers to the ſaid *Viſne*. 1 *Saund.* 229.

Where the *Venue* ſhall be of the Place, where the Defendant juſtifies.

H Where when the Action is laid in one Place, and the Juſtification in another Place, the *Venue* ſhall be of the Place where the Defendant juſtifies. 2 *Saund.* 247.

Venire awarded to wrong Officers, is no Cauſe of Challenge to the Array.

I Where the Court awards a *Venire* to the Officers of a wrong Place, it is no Cauſe of a Challenge to the Array. 2 *Saund.* 257, 258.

A A *Venire* according to a ſpecial Cuſtom miſ-awarded only in Part, reſolved to be aided after Verdict, by the Statute of 21 *Jac. cap.* 13. of Jeofails. 2 *Saund.* 258.

Venire miſ-awarded in part, aided after Verdict.

B In the awarding of a *Venire facias*, *ſuper quo præceptum fuit Vic. Com. &c.* is Error. *Ibid.* 393.

Error in the awarding of a *Venire*.

C If a Matter of Law be depending undetermined, and an Iſſue alſo joined in the Cauſe, there muſt be a ſpecial *Venire* awarded, *tam ad triandum exitum quam ad inquirendum de dampnis ſi, &c. Hill.* 23 *Car. B. R.* As well to try the Iſſue, as to find the Damages both upon the Iſſue, and upon the Matter put in Judgment of the Court, if Judgment ſhall be given for the Plaintiff.

Where a ſpecial *Venire* muſt be awarded.

D The Plaintiff's Attorney ought to give a Copy of the Jury returned upon the *Venire* unto the Defendant's Attorney before the Trial, if he deſire it; and after the Trial it may be filed, if the Plaintiff thinks fit, or the Court requires it: *Paſch.* 24 *Car. B. R.* That the Defendant may have a Sight of it.

Plaintiff's Attorney, if deſired, muſt give the Defendant's Attorney a Copy of the Jury returned on the *Venire*.

E A *Venire de vicineto Civitatis*, is good without naming of the Pariſh within the City, out of which the Jurors are ſummoned; and ſo it was ſaid to be adjudged in *Gavel* and *Gippoe*'s Caſe, 10 *Jac.* contrary to the Book of 5 *H.* 5. For a City may have but one Pariſh in it, and it is ſaid it ſhall be intended to have no more Pariſhes than one, except the contrary be ſhewed. See alſo *Raym.* 67.

A *Venire de vicineto Civitatis*, good without naming a Pariſh.

F The Party that will move to have the *Venue* changed, muſt move for it the ſame Term the Declaration is delivered, if it be delivered above eight Days before the Term ends to the Defendant's Attorney; but if there be not eight Days of the Term to come when it is delivered, it may be moved the next Term after the Action is brought, before the Rules for Anſwer are out: *Trin.* 23 *Car. B. R.* For that is the proper Time to plead and join Iſſue.

When the Party that would change the *Venue* muſt move for it.

G This Court ought not to change the *Venue*, ſo that by it the Cauſe cannot be tried within the Juriſdiction to the Court: *Trin.* 23 *Car. B. R.* For that is to ouſt themſelves of their own Juriſdiction, and it may be to the Prejudice of the Plaintiff that laid his Action there.

B. R. may not alter the *Venue*, ſo as the Cauſe cannot be tried within their Juriſdiction.

H The *Viſne* ſhall not be changed from the Place in the Count by pleading of a tranſitory Matter; and if it be, it makes the Plea ill. 1 *Lutw.* 14.

Viſne ſhall not be changed by pleading a tranſitory Matter.

I That *Paul*'s Church-yard, *White-hall*, *King-ſtreet*, St. *Margaret Weſtminſter*, are good *Viſnes*. *Ibid.* 215.

Paul's Church-yard, *&c.* good *Viſnes*.

K *Venue* not changed in Covenant. 1 *Lev.* 307.

Venue in Covenant may not be changed.

Where the Conſent was, muſt be pleaded.

Aſſumpſit, in Conſideration he would conſent, and not hinder a Marriage; Plea, that he conſented, and did not hinder; is ill; without ſaying where he conſented: 2 *Lev.* 227. For the Conſideration was not only that he ſhould not hinder, but poſitive alſo that he would conſent. A

So likewiſe where the Defendant had Aſſets.

So an Executor pleads Judgment. Plaintiff replies, one Hundred Pounds only due; and the Defendant had Aſſets *ultra* the hundred Pounds, but ſays not where, and held ill, upon a general Demurrer. 3 *Lev.* 311. B

What Oath the Defendant muſt take upon a Motion to change the *Venue*.

If the Defendant will move to change the *Venue*, he muſt make Oath, That the Cauſe of Action, if any be, did ariſe in the County where he would have the *Venue* laid, and not in the County where the Plaintiff hath laid his Action, or elſewhere out of the County where he ſwears it did ariſe; and the Defendant's Attorney, or his Clerk, muſt make Oath of the Time when he received the Plaintiff's Declaration: *Trin.* 23 *Car. B. R.* That the Court may be rightly informed of the Matter, and not induced to change the *Venue* contrary to the antient Rules and Practice thereof. C

Where the *Venue* muſt be laid in a real Action.

Where a Suit is brought upon a real Action, the *Venue* ought to be laid in that County where the Thing is for which the Action is brought: *Hill.* 23 *Car. B. R.* Becauſe it is local, and only triable there, and is not tranſitory, which may be in any County. D

In what Actions the Court will not change the *Venue*.

In an Action of Debt for Rent, Action of Covenant, or upon any Specialty; or in an Action of Account-Render, the Court will not alter the *Venue*. *Trin.* 1650. *B. S.* and *Mich.* 1650. *Ibid.* E

Judgment reverſed, becauſe the *Venire* was not at large.

A Judgment given in an Inferior Court was reverſed here by a Writ of Error, becauſe the *Venire* was *Venire facias*, *&c.* and not at large: *Hill.* 1650. *B. S.* But ſuch a *Venire* in the Common Pleas is good: For the conſtant Courſe there, is to enter the *Venire* briefly with an, *&c.* but inferior Courts muſt not vary from their uſual Forms. F

Defendant may move to alter the *Venue*, tho' Plaintiff's Declaration be not perfect.

The Defendant may move to alter the *Venue*, although the Plaintiff's Declaration be not perfect: *Mich.* 1650. *Oct.* 25. *B. S.* For though it be not perfect in all Things, yet it may be ſo perfect, that he underſtands where the *Venue* is laid; and that is enough to ground a Motion upon to alter it, if it is laid where it ought not to be. G

In Debt for Rent, where there is no Privity of Contract, the *Venue* muſt not be laid out of the County where the Land lies.

In an Action of Debt brought for Rent due for Land upon a Leaſe under Hand and Seal, where there is no Privity of Contract, as againſt an Aſſignee, *&c.* the *Venue* muſt not be laid out of the County where the Land lies for which the Rent is H due; for the Action is for want of Privity of Contract become a local Action, *ratione terræ*, out of which the Rent is iſſuing, and not tranſitory: *Hill.* 1650. *B. S.* 29 *Jan.* But where the Action is brought by the Leſſor againſt the Leſſee, there being Privity of Contract, the Action is tranſitory, and the Demiſe may be laid to be made in any other County than that where the Land lies.

A A *Venue* cannot be laid in *Wales* in a tranſitory Action, the Cauſe whereof did ariſe in *England*; becauſe this would be to remove the Cauſe to be tried out of the Juriſdiction of the Court, and then this Court can give no Judgment in it: *Trin.* 23 *Car.* *B. R.* And ſo the Trial would be fruitleſs.

The *Venue* cannot be laid in *Wales*, if the Cauſe of Action ariſe in *England*.

B *Venue* not changed in *Scandalum Magnatum.* 1 *Lev.* 56. See 3 *Keb.* 39.

Not changed in *Scandalum Magnatum.*

C 1 The *Venue* cannot be changed after the Defendant hath pleaded, although the Plaintiff hath amended his Declaration in a principal and material Part of it, though the Defendant do imparl by reaſon of that Amendment, for this all makes it not a new Declaration: 1650. *B. S.* And the Defendant hath taken Advantage of the Amendment by his Imparlance to it, whereas otherwiſe he ought to have pleaded.

Nor after the Defendant has pleaded, tho' the Plaintiff has mended his Declaration.

D The amending of a *Venire* out of an Inferior Court ought to run thus: *Ideo præceptum eſt per eandem Curiam.* *Hill.* 1649. *B. S.* 30 *Jan.*

How a *Venire* to be amended out of an Inferior Court.

E Where the Declaration is good, but the Plea is uncertain, and yet an Iſſue is joined and tried upon it, this is a Miſ-trial; for there can be no Judgment given upon it, for there was no good Iſſue joined, becauſe the Plea was uncertain; and therefore there muſt be a Repleader to bring the Matter in Queſtion, and a new *Venire* to ſummon another Jury to try the Cauſe again. *Hill.* 1649. *B. S.* 8 *Feb.*

Where, upon a Miſtrial, there muſt be a new *Venire* to try the Cauſe again.

F *Probos & legales homines* in a *Venire*, are of the ſame import as *liberos & legales homines*, adjudged: *Raym.* 417. and *Idem* 418.

Probos is of the ſame Import as *liberos.*

G It is ſaid, That if ſince the Expiration of the Statute of 16 & 17 *Car.* 2. *cap.* 3. the *Venire* be *quorum quilibet* may expend twenty Pounds in Lands, and reſolved that the Writ was good, for that before any Statute it was, and alſo then was in the Power of the Court to award a *Venire facias* of what large Sums they pleaſe.

The Court may award a *Venire* of what large Sums they pleaſe.

H See 1 *Saund.* 229. *Hill.* 20 & 21 *Car.* 2. That the want of a *Viſne* is aided after Verdict by 16 & 17 *Car.* 2. *cap.* 8.

Want of a *Viſne* is aided after Verdict.

I An Action on the Caſe for forging a Will brought in *Middleſex*, but the Land compriſed in it lay in *Suffolk*, and the *Venue* on Motion changed to *Suffolk.* *Raym.* 33.

Caſe for forging a Will brought in *Middleſex*: The Lands lay in *Suffolk*, and the *Venue* changed to that County.

Why the Statute appoints Actions to be brought in the proper Counties.

The Statute directs Actions to be brought in the proper Counties where they ariſe; for the laying them in foreign Counties, doth put the People to Charge for Motions to alter the *Venue* into their proper Counties; and therefore it is fit the Attorneys ſhould obſerve it: By *Rolle*, 1650. *B. S.* But as yet the Practice herein hath been always contrary, and great Inconveniencies might grow thereby, if the Hands of the Court ſhould be tied up from doing that which the Exigency of the Caſe may require in ſome ſpecial Caſes. A

Where a *Medietas Linguæ* ſhall be.
8 H. 6. cap. 29.

A *Medietas Linguæ* ſhall be where an Alien is a Party. B

A *Medietas Linguæ* awarded.

Where after Iſſue joined a *Medietas Linguæ* was awarded, (which are half *Engliſh*, and half Foreigners) becauſe the Defendant was an Alien. 1 *Plow. b.* C

In tranſitory Actions the *Venue* ſhall not be altered by Pleading.

An Action laid in *London*, the Defendant pleads the Death of the Plaintiff at *York*, this is naught; becauſe it is a tranſitory Matter, and ſhould have ſaid, That he died at *London*; and the Jury muſt come from thence, not from *York*. *Lutw.* 345. D

Actions againſt Officers muſt be brought in the proper County.

21 Jac. 1. cap. 12.

So upon Penal Statutes.

Actions brought againſt Officers of Juſtice, muſt by the Statute of 21 *Jac. cap.* 12. be laid in the proper County, and from thence the Jury muſt come; and ſo muſt Actions upon the penal Statutes, except in Caſe of the King in ſome particular Caſes; as for Cuſtoms, *&c.* E

A *Venire* was awarded *Infra Vicinet. de Doncaſter*, and doth not ſay, *Infra Jur.* it is naught.

Upon a Writ of Error from an Inferior Court, the *Venire* was awarded *de Vicinet. de Dancaſter*, and did not ſay, *Infra Juriſdictionem Curiæ prædict.* and the Court was of Opinion, that it was naught; becauſe the *Vicinet. de Doncaſter* extends as far as all the Pariſhes in the Hundred where *Doncaſter* is, the whole Hundred being but a *Venue*; and an Inferior Court cannot award or grant any Proceſs to be executed out of their Juriſdiction. *Hill.* 5 *W. & M. B. R.* F

No Place alledged for the Promiſe in an *Aſſumpſit*, but good after Verdict.

In an *Aſſumpſit* no Place was alledged where the ſecond Promiſe was made, but good after a Verdict. G

Want of a *Venue* upon a *Nil dicit*, is not material.

The want of a *Venue* upon a *Nihil dicit*, is not material; becauſe the Writ of Inquiry was of nothing but only of the Damages, and a Writ of Inquiry of Damages may be by any Jurors of the County. *Lev.* 237. H

How it muſt be now by the Statute of 4 & 5 Ann.

By a Statute made 4 & 5 *Annæ*, it is enacted, That for the Trial of all Iſſues in the Courts at *Weſtminſter*, except in Caſes of Appeals of Felony and Murder, and Informations or Actions upon I

Penal Statutes, the *Venire facias* ſhall be awarded of the Body of the proper County where ſuch Action is triable.

A **In** an Action brought in any of the Courts at *Weſtminſter*, where it ſhall appear to the Court to be neceſſary, that the Jurors who are to try the Iſſue in any ſuch Action, ſhould have the View of the Meſſuages in Queſtion, *&c.* in order to their better Underſtanding of the Evidence to be given at the Trial, the reſpective Courts may order Special Writs of *Diſtringas* or *Habeas Corpora* to iſſue, by which the Sheriff or Officer to whom ſuch Writ is directed, ſhall be commanded to have ſix out of the firſt twelve named in ſuch Writ, or more of them, at the Place in Queſtion, ſome convenient Time before the Trial; who then and there ſhall have the Matters in Queſtion ſhewn to them by two Perſons in the ſaid Writs named, to be appointed by the Court, and the ſaid Sheriff, or other Officer who is to execute the ſaid Writ, ſhall by a Special Return thereupon certify, That the View hath been had according to ſuch Writs. 4 & 5 *Annæ*.

The Jurors to have a View before Trials.

4 & 5 Ann.

B **A** *Venire facias* that is filed, cannot be altered without Conſent of the Parties: *Mich.* 22 *Car. B.R.* For the filing of it doth make it a Record, which all Parties are bound by: But if it be not filed, the Plaintiff may make out a new one, and try the Cauſe at another Aſſizes, and by another Jury.

A *Venire* which is filed, cannot be altered without Conſent of the Parties.

C **Debt** was brought in *London* upon a Bond payable at *Briſtol*, the Defendant pleads *ſolvit ad Diem & Locum*; and moved, That there ſhould go out a *Venire facias* to the Sheriff of *Briſtol*, for fear the Plaintiff ſhould try it in *London*; for if he ſhould try it at *London*, it would be a Jeofail after Verdict, by the Statute of 16 & 17 *Car.* 2. *cap.* 8. and the Court ordered it accordingly. For, ſays the Court, we will order the *Venire facias* to be where it ought to be, *viz.* in *Briſtol*. 9 *W.* 3. See Title **Trial**. This Act was made perpetual by 22 & 23 *Car.* 2. *cap.* 4.

It is in the Power of the Court where the *Venire* ſhall go.

16 & 17 Car. 2. cap. 8.

D **Upon** a *Scire facias* againſt Bail, and Iſſue was tried in *Middleſex*, whether the Debt was levied in *Kent* or no. It was adjudged a good Trial, and Coſts taxed upon the new Statute. *Note*, The *Scire facias* was brought in *Middleſex*, and could not be brought elſewhere, and ſo the Trial was well there. 9 *W.*

Whether the Money was paid or no in *Kent*, was tried in *Middleſex*, and good.

E **Where** the Plaintiff lays tranſitory Matter in one County, the Defendant cannot by Plea draw this into another County. 1 *Lev.* 149.

Tranſitory Matter cannot by Plea be drawn into another County.

F **When** a Tranſitory Action is laid in a County where it did not ariſe, and the Defendant by Pleading brings it into the County where the Cauſe of Action did ariſe; yet it may be tried in the County where it was firſt laid in the Declaration, and not in the County where the Defendant

When an Action may be tried in the one Place or the other.

16 & 17 Car. 2. cap. 8.

dant hath brought it by Pleading, by the Statute of 16 & 17 *Car.* 2. *cap.* 8. which ſays, that after a Verdict no Judgment ſhall be ſtayed, for that there is no proper County or Place where the Action is laid. But the Defendant may move, that there may be a *Venire* to try the Cauſe where it is brought by Pleading, and the Court doth uſually grant it. See before.

Where the *Venire facias* ought to be *de Corpore Comitatus.*

4 & 5 Ann.

What is a *Lieu Conus.*

A **Where** the *Venue* cannot come from a Vill, Hamlet, or *Lieu Conus*, there it might before the Statute of 4 & 5 *Annæ*, be *de Corpore Comitatus. Mich.* 22 *Car. B. R.* For if it might not be ſo, the Cauſe could not be tried; and ſo there would be a Failure of Juſtice which the Law will not permit, if it may be helped without Injuſtice. A *Lieu Conus* is a Caſtle, Manor, or other notorious Place, well known, and generally taken Notice of by thoſe that dwell about it; and not a Cloſe or Paſture Ground, or ſuch like Place of no Repute: *Mich.* 22 *Car. B. R.* Which may be known, or not to be known of thoſe who inhabit near it.

The Court will not alter the *Venue* in Debt upon a Bond.

Where the Defendant may, by Pleading, bring it to be tried in another Place or County.

16 & 17 Car. 2. cap. 8.

B **The** Court will never change the *Venue* in an Action of Debt brought upon an Obligation: Becauſe the Action is Perſonal and Tranſitory, and it is at the Election of the Party to lay it where he pleaſeth. But if the Condition of the Bond be for the Payment of the Money at another Place and County, or to do an Act at another Place and County: There the Defendant by pleading Performance of the Condition, ſhall bring it to be tried by a Jury of the *Venue* of the ſame Place and County, as are mentioned in the Condition: Becauſe the Bond is by ſuch Plea admitted to be the Defendant's Bond, as the Plaintiff hath declared; ſo that need not be proved or tried. Then the Matter in the Condition is what remains to be tried, and that is moſt proper to be tried where the Thing is by the Condition directed to be done. But now by the Statute of 16 & 17 *Car.* 2. *cap.* 8. a Trial in the firſt County is good. See before, this Act made perpetual.

A *Venire* may be returned before the Iſſue is actually enter'd.

C **A** *Venire facias* is oftentimes returned before the Iſſue is actually enter'd, and yet it is well enough. For the Iſſue is joined in Paper, and enter'd afterwards upon Record by the Clerk in Court.

Jurors to have ten Pounds *per Annum* in Freehold, Copyhold, or antient Demeſne.

4 & 5 W. & M. c. 24. Sect. 15.

D **By** an Act of Parliament made 4 & 5 *W.* & *M. cap.* 24. *ſect.* 15. it is enacted, That all Jurors (except Strangers, upon Trials *per Medietatem Linguæ*) who are to be returned for the Trials of Iſſues in any of the Courts at *Weſtminſter*, or before Juſtices of Aſſize, *Niſi Prius*, *Oyer* and *Terminer*, Gaol-Delivery, or General Quarter-Seſſions of the Peace, ſhall have in their own Name, or in Truſt for them, within the ſaid County, ten Pounds *per Annum* at the leaſt, above Repriſes, of Freehold or Copyhold Land, or of

Lands and Tenements in Antient Demeſne, or in Rents, or in all or in any of them, in Fee-ſimple, Fee-tail, or for the Life of themſelves, or ſome other Perſon: And if any Perſon of a leſſer Eſtate and Value ſhall be returned upon ſuch Jury, it ſhall be Cauſe of Challenge; and the Party ſhall be diſcharged upon the Challenge, or his own Oath of the Truth of the Matter. And in all *Venires* to be hereafter awarded, it ſhall be therein mentioned, *Quorum quilibet habeat decem Librat' Terræ Tenementor' vel Redditum per Ann' ad minus per quos rei Veritas, &c.* Alſo the ſaid Statute directs the Sheriff to ſummon each Juryman by the Space of ſix Days at the leaſt before the Trial-Day, upon Pain of forfeiting ten Pounds to their Majeſties.

When the Juryman to be ſummoned.

A **If** the Defendant moves to change the *Venue*, upon Affidavit made, That the Cauſe of Action (if any be) did ariſe in *Kent*, or other County, and not in *London* (where the Action is laid) or elſewhere out of the County of *Kent*, or other County: If upon a Motion the Court orders the *Venue* to be changed, the Plaintiff muſt alter his Declaration, and lay his Action in *Kent*, or other County.

How it is where the Affidavit is, That the Cauſe of Action was in *K.* or *S.* and not in *London.*

B **By** the Statute of 8 & 9 *W.* 3. *cap.* 9. it is enacted, That after *Michaelmas* 1697, all Juſtices of the Peace are required and commanded at their Seſſions next before *Michaelmas*, yearly to iſſue out Precepts to the Conſtables within their reſpective Counties or Diviſions, requiring them to return Perſons to ſerve upon Juries, as by the ſaid Act is directed.

Conſtables, by Command from the Juſtices, muſt return every Year Perſons to be Jurors. 8 & 9 W. 3. cap. 9.

C **In** the *Venire* only twenty-three Jurors were returned, and in the *Habeas Corpora* there were the twenty-three, and the Addition of *J. S.* to make up the twenty-four; which *J. S.* was ſworn, and held to be a Miſ-trial: But if twelve of the twenty-three returned had tried it, it had been well enough. *Cro. Car.* 278. *pl.* 18.

Twenty-three return'd upon the *Venire*, and upon the *Habeas Corpus* there were twenty-three and *J. S.* added; which *J. S.* was one of them ſworn, and held to be ill: But if twelve of the twenty-three had tried it, it would have been good.

D **Where** a Place which is no Vill, ſhall after a Demurrer or Verdict be intended a Vill. 3 *Salk.* 381.

Intendment of *Venue.*

E **Where** the want of a *Venue* is cured. 3 *Salk.* 381.

Want of *Venue.*

F **In** an Action of *Scan. Mag.* laid in *London* by Lord *S.* the Court, by reaſon of his Intereſt there, at the Inſtance of the Defendant, ruled that the *Venue* ſhould be changed, and left it to Lord *S.* his Election to lay it in any other County but *London* and *Middleſex*. *Skin.* 40.

Venue chang'd in *Scan. Mag.*

G *Venire ſicut alias* is a *Venire* of itſelf, and a Trial may be had upon it. *Skin.* 119.

Alias Venire.

Venue,

Venue altered.

Venue where it may be altered by Privilege of an Attorney when Plaintiff, but not when Defendant. *Carthew* 126. A

Venue.

Concerning the Laying of a *Venue*. *Ibid.* 234, 256. B

Scan. Mag.

Where it ſhall not be changed in an Action of *Scandalum Magnatum*. *Ibid.* 400. C

Coſts.

On Leave to amend a *Venire* after Error brought, the Plaintiff in the Original Action is not to pay Coſts. *Mod. Caſes in Law and Equity* 234. D

Venue changed.

Where in a Tranſitory Action by Special Original the *Venue* was changed. *Ibid.* 228. *vide* 316. E

Privilege.

A Barriſter or Attorney join'd with another, has no Privilege to change the *Venue*. *Ibid.* 316. F

Verdict.

See {Damages. Jeofails. Judgment.} {Jury. Nil habuit in Tenementis.}

Verdict, what.

VErdict, quaſi dictum Veritatis, & ad Quæſtionem Juris non reſpondent Juratores ſed Judices, & ad Quæſtionem Facti, non reſpondent Judices ſed Juratores: For Jurors are to try the Fact, and Judges are to adjudge according to the Law that ariſeth upon the Fact. Co. Litt. 226. a. G

A Verdict found againſt a Record, is void.

A Verdict which is found againſt a Record, is a void Verdict: *Hill.* 21 *Car. B. R.* For a Record is of a higher Nature, and more Credit is to be given unto it than unto a Verdict, and the Record which proves itſelf, doth prove that the Verdict is falſe. H

No Conſtruction ought to be made to vacate a Verdict, that can be any Ways conſtrued to be good.

If a Verdict may be any Ways conſtrued to make it a good Verdict, there ought not to be made a Conſtruction of it to deſtroy it, and make it bad: *Hill.* 21 *Car. B. R.* For the Law delights in I the Preſervation of Things, and to make the beſt Conſtruction of them, and would not have Things to be done in vain, nor conſtrue them to be ſo done, where a better Conſtruction may reaſonably be made.

A **The** Court will not take the Inqueſt by Default, except the Plaintiff's Counſel do pray it: *Hill.* 21 *Car. B. R.* For the Plaintiff may chuſe whether he will challenge any of the Jury or no, and therefore the Court will not take it except he deſire it.

Inqueſt ſhall not be taken by Default, unleſs the Plaintiff's Counſel pray it.

B **If** the Plaintiff do fail in proving of his Iſſue, the Verdict ought to be found for the Defendant, except the Jury do know of their own Knowledge, that the Defendant is guilty: *Hill.* 21 *Car. B. R.* So that the Jury is not ſo tied up by the Evidence, that they muſt always give their Verdict according to it; for a Man's own Knowledge is the beſt Proof of Things.

If the Plaintiff prove not his Iſſue, the Verdict muſt be for the Defendant, except the Jury know him to be Guilty.

C **If** one of a Jury that found a Verdict, were outlawed at the Time when the Verdict was found, the Verdict is not good, but may be reverſed by Error: *Hill.* 21 *Car. B. R.* For an outlawed Perſon is out of the Protection of the Law, and is debarred from intermeddling with any Civil Affairs, as a Perſon excommunicated is from participating in Divine Ordinances, and is not *liber & legalis homo*, as every Juryman ought to be.

A Verdict may be reverſed if one of the Jury were outlawed.

D **If** a Verdict be found for the Plaintiff, and he will not enter it, if the Defendant move the Court in it, they will compel him to enter it; and ſo it is where the Plaintiff doth refuſe to enter a Verdict found for him, upon the executing of a Writ of Inquiry of Damages: *Mich.* 22 *Car. B. R.* For the Plaintiff ought to reſt ſatisfied with what the Law gives him, or elſe there would be no End of Suits; or the Defendant may enter it himſelf, if the Plaintiff will not, to prevent farther Trouble which may happen unto him by the not entering of it.

The Plaintiff ſhall be compelled to enter his Verdict.

E **A Declaration** that is not good, is in many Caſes helped after a Verdict, by the Statute of Jeofails; but where the Declaration doth not make it appear that the Plaintiff had ſome Cauſe of Action to warrant his Declaration; or where ſome material and eſſential Part of the Declaration is omitted, ſuch Declarations are not helped by the Statute: *Mich.* 22 *Car. B. R.* and *Hill.* 22 *Car. B. R.* For that were to ſupply a Declaration, where in Effect there was none, which the Statute did not intend, but only to help ſome Faults.

What Declarations are not helped by the Statute of Jeofails.

F **The** Plaintiff ſhall not have Judgment upon a Verdict which falſifies the Declaration. 1 *Saund.* 230.

Plaintiff ſhall not have Judgment on a Verdict that falſifies his Declaration.

G **Where** although the Jury have found *quod conceſſit*; yet the Court will adjudge *quod relaxavit.* 2 *Saund.* 97.

Where the Court will adjudge contrary to what the Jury have found.

A Verdict need not be ſo preciſe as a Plea.

That a Verdict need not be ſo preciſe as a Plea. 2 *Saund.* 97. A

Where in Error the firſt Verdict ſhall be certified as well as the laſt.

Where in Error the firſt Verdict ſhall be certified as well as the laſt Verdict. *Ibid.* B

Of a Verdict in an Action of Waſte.

Concerning a Verdict in an Action of Waſte: 2 *Saund.* 255. And that the finding of the particular Waſtes is the Subſtance of the Verdict. *Ibid.* C

Where the Court will rectify a ſpecial Verdict.

If a Special Verdict be drawn up contrary to the Notes agreed upon by the Counſel on both Sides at the Trial, the Court upon a Motion will rectify this, if the Parties cannot agree between themſelves to do it: *Mich.* 22 *Car. B. R.* If it be in a Matter fit to be done; but if the Matter of Fact be found imperfectly, then they will award a *Venire facias de novo,* to try the Iſſue again. D

The Party at whoſe Prayer a Special Verdict is found, ought to proſecute it.

If the Court do direct the Jury to find a Special Verdict upon the Prayer of the Plaintiff, or of the Defendant; the Party at whoſe Prayer the Special Verdict was found, ought to proſecute this Special Verdict, that the Matter in Law in it may be determined: *Mich.* 22 *Car. B. R.* Becauſe the Verdict was directed to be ſo found in his Favour, and at his Deſires; and therefore he ought not to make Uſe of this Favour to delay the other Party thereby, but muſt proſecute with Effect; and if either Party ſhall delay to join in the Drawing of it up, and to pay his Part of the Charges, the Court will order the Party who deſires it to draw it up *ex parte,* and the other Side ſhall not be heard by his Counſel to argue it. E

The Counſel on each Side are to draw up Notes for a Special Verdict.

Where the Court doth direct the Jury to find a Special Verdict, one of the Counſel on each Side are to agree upon the Notes for it, and to draw them up, and to ſet their Hands to them, and to deliver them in unto the Jury in convenient Time, ſitting the Court, or elſe the Court will take a general Verdict: *Mich.* 22 *Car. B. R.* That the Trial may take ſome Effect, and not be fruitleſs. F

A Verdict may be taken out of Court.

The Chief Juſtice at *Weſtminſter-Hall,* or *Guild-Hall,* or any Judge of Aſſize, may in ſome Special Caſe take a Verdict out of Court, which Verdict is called a Privy Verdict; but then the Verdict muſt afterwards be pronounced in Court; *Mich.* 22 *Car. B. R.* And after this Privy Verdict given, the Jury may, when they come into Court, diſſent from it if they think fit, and give a contrary Verdict in Court to that which they gave privately, which laſt Verdict ſhall ſtand, and the Privy Verdict ſhall be void. G

A Privy Verdict, what.

A Privy Verdict is in Strictneſs no Verdict: 'Tis only a Favour which is allowed by the Court to the Jury for their Eaſe. 5 *Mod.* 351. H

A **No** Privy Verdict can be given in Criminal Cauſes which concern Life, as Felony, *&c.* becauſe the Jury are commanded to look upon the Priſoner when they give their Verdict; and ſo the Priſoner is to be there preſent at the ſame Time: *Raym.* 193. But in Criminal Caſes where the Defendant is not to be perſonally preſent at the Time of the Verdict, a Privy Verdict may be given. 5 *Mod.* 351.

No Privy Verdict in Criminal Cauſes.

Except where the Defendant is not to be perſonally preſent.

B **If** a Matter of Fact be left out in the Notes of the Special Verdict drawn up by the Counſel, this cannot be amended afterwards, tho' the Court be moved in it, and altho' the Counſel on both Sides do conſent: *Mich.* 22 *Car. B. R.* For this were for the Court and Counſel to make a new Verdict againſt the finding of the Jury, who have found the Matter of Fact already as the Notes are; but the Court will in this Caſe grant a *Venire facias de novo.*

Matter of Fact omitted in the Notes cannot be amended afterwards.

C **The** Plaintiff and Defendant ought both of them to appear in Court to hear a Special Verdict, and the Jury is to be called, and to have the Special Verdict read unto them by the Secondary, and upon the Reading of it, if there be any Miſtake in the penning of it, the Counſel on either Side hath Liberty to except againſt it; and when the Counſel is agreed, then the Secondary demands of the Jury, Whether they agree to find it ſo? And if they anſwer they do, then the Verdict is found: *Paſch.* 23 *Car. B. R.* And it is to be afterwards drawn up, and entered according to the Notes ſo found.

Method of finding a Special Verdict.

D **If** the Jury will take upon themſelves to find againſt the Directions of the Court, any Thing in Matter of Law, the Court will receive the Verdict: *Paſch.* 23. *Car. B. R.* But they had beſt have a Care that they do not incur the Penalty of an Attaint.

The Court will receive a Verdict found againſt their Directions.

E **If** in an Action upon the Caſe brought for Speaking of ſcandalous Words, the Jury do find that the Defendant did ſpeak Words which are actionable againſt the Plaintiff, and ſo give a Verdict for the Plaintiff, and it appears that the Words found are not expreſſed in the Declaration, this is not a good Verdict, unleſs other Words are found to be in the Declaration which are actionable: *Trin.* 23 *Car. B. R.* For the Words in the Declaration are only put in Iſſue to the Jury, to try whether they were ſpoken or not; and not the Words which the Jury have found, and ſo they have found a Verdict upon no Iſſue joined.

If the Words found are not in the Declaration, the Verdict is not good.

F **A Special** Verdict after the Notes are agreed upon by the Counſel, and drawn up, and their Hands ſet unto them, is not a Special Verdict, until it is allowed by the Court: *Mich.* 24 *Car. B. R.* For they are to judge whether the Matter in Queſtion be rightly ſtated or not.

No Special Verdict 'till allowed by the Court.

G **Where** Judgment ſhall be arreſted for the Incertainty of the Verdict. 1 *Saund.* 154, 155. and 2 *Saund.* 171.

Where Judgment ſhall be arreſted for Incertainty of the Verdict.

Where

If a Verdict be imperfectly found, there muſt be a new Trial.

A **Where** a Verdict is imperfectly found by the Jury, there the Defendant is not to move upon it in Arreſt of Judgment, for there cannot be any Judgment given upon ſuch a Verdict, and by Conſequence the Motion is needleſs; but in ſuch Caſe there ought to be no *Venire* to ſummon a new Jury to try the Cauſe again, becauſe the former Trial was fruitleſs. *Mich.* 23 *Car. B. R.*

So likewiſe where a Special Verdict is imperfectly drawn up.

B **Where** a Special Verdict is imperfectly drawn up and entered, the Judges will not argue the Matter in Law; for there can be no Judgment given in the Cauſe by reaſon that the Verdict is not good; but in ſuch a Caſe there muſt be a new *Venire*, that a new Verdict may be found, which may bring the Matters in Law in Queſtion, that ſo it may be determined, and Judgment given according to the Law. *Hill.* 23 *Car. B. R. Mich.* 1649. *B. S. Nov.* 13.

A Matter in Law found by a Special Verdict ought not to be read in Court, till Books be given to the Judges.

C **A Cauſe** depending in Court upon a Matter in Law, found by a Special Verdict, ought not by the antient Practice of the Court to be read in Court as a Record, until Books thereof be given unto the Judges of the Court, and ſo is the Uſe in the Exchequer at this Day: *Paſch.* 24 *Car. B. R.* That the Judges may have ſufficient Time to conſider of, and to ſpeak to the Matter in Law, and to look into them at the Time of the Arguments made at the Bar, as they ſhall have Occaſion; but now the Court allows the Books to be delivered to them four Days at leaſt before the Cauſe is put into the Paper for a *Conſilium*.

Every Miſdemeanor of a Jury will not vacate the Verdict.

D **Every** Miſdemeanor of the Jury before they give their Verdict, is not a ſufficient Cauſe to make void the Verdict: *Paſch.* 24 *Car. B. R.* Although they may be puniſhable for it.

There can be no Judgment on a Verdict where no Iſſue is joined.

E **If** a Verdict be given where there is no Iſſue joined, there can be no Judgment given upon ſuch a Verdict, but there muſt be a Repleader to bring the Matter to a Trial: *Paſch.* 24 *Car. B. R.* For there was nothing tried before, for want of an Iſſue joined.

Where a Special Verdict muſt be delivered to the Jury.

F **A Special** Verdict ought to be prepared by Counſel, and delivered to the Jury to conſider of before they deliver their Verdict in private to the Judge, and not the next Morning when the Jury come to deliver their Verdict openly in Court: *Paſch.* 1650. *B. S.* 2 *Maii.* For then the Court cannot expect till they conſider of it, and without Conſideration it is not fit for them to give their Verdict.

If a Special Verdict be ordered, and the Counſel do not attend with the Notes, the Jury may give a general Verdict.

G **By** *Glyn* Chief Juſtice. If the Court do order a Special Verdict, and the Counſel do not attend with the Notes of the Verdict, or do not ſet their Hands to them when the Jury is to give in their Privy Verdict to the Judge, the Jury may the next Day give a general Verdict in Court, notwithſtanding the

Direction to find a Special Verdict; and so was it done in a Trial at the Bar. *Pasch.* 1656. *B. S.*

A **In** criminal Causes, or real Actions, or Actions *qui tam, &c.* if there be any Errors in the Proceedings, they are not helped after a Verdict, by the Statute of Jeofails: *Pasch.* 1651. *B. S.* 11 *Maii.* For the Statute mentions not these Matters, and it shall not be extended to Equity, because it is an Abridgment of the Practice of the Common Law, and penal to the Party concerned.

What Errors are not helped after a Verdict.

B **What** Defects are aided after Verdict. See Title **Jeofails**, and the Statute 16 & 17 *Car.* 2. *cap.* 8.

What Defects are aided after a Verdict.

C **When** a defective Count shall be made good by the Verdict. 1 *Lut.* 899.

A Defective Count made good by the Verdict.

D **Although** the Court do bid the Secondary to record a Nonsuit, yet if it be not recorded, the Court may take the Verdict afterwards: *Trin.* 1651. *B. S.* For the Nonsuit is no Nonsuit before it be recorded, for until it is recorded it is not upon Record.

If the Secondary have not recorded a Nonsuit, the Court may take the Verdict.

E **Although** the Plaintiff and the Defendant do consent to have the Jury find a Special Verdict, yet they may find a General Verdict: *Trin.* 1652. *B. S.* But it is a very unusual Thing for them to do it.

The Jury may find a General Verdict, tho' both Parties consent to find a Special one.

F **A Verdict** by Default in an Action of Trespass and Ejectment, is found in this Manner: When the Jury is ready at the Bar to try the Cause, the Secondary bids the Crier call the Defendant, which he thrice doth; and if he do not appear, the Plaintiff's Counsel do pray the Court to take the Inquest by Default; thereupon the Jury is sworn, and the Record is read unto them; then the Plaintiff's Counsel do open the Record unto the Jury, and demand of the Defendant's Counsel whether they will confess Lease, Entry and Ouster, or not; which if they refuse to do, then the Plaintiff is called Nonsuit, and Judgment is to be entered against the casual Ejector; but if the Defendant confesseth Lease, Entry and Ouster, then the Plaintiff's Title must be opened, and some Proof thereof made; and if no Evidence be given for the Defendant, the Jury must find for the Plaintiff, and give him Damages and Costs of Suit: 1654. *B. S.* It is called a Verdict by Default, by reason of the taking it in this Manner upon the Default of the Defendant's Appearance to defend his Title.

Manner of finding a Verdict by Default in an Action of Trespass and Ejectment.

G **In** the Case of *Bateman* and *Harvey*: *Pasch.* 1659. *B. S.* It was said by *Glyn* Chief Justice, That the Court will not compel the Defendant's Counsel to subscribe a Special Verdict; but if he refuse to do it, the Court will order the Verdict to be entered *ex parte* without subscribing of it.

The Court will not compel the Defendant's Counsel to subscribe a Special Verdict.

Where Surpluſage ſhall not hurt.

A **Where** Surpluſage in a Verdict ſhall not hurt. 2 *Saund.* 255, 308.

Where taxing of Coſts, not recoverable, ſhall not hurt for the Reſidue.

B **Where** taxing of Coſts by the Jury where Coſts are not recoverable, ſhall not hurt the Verdict as to the Reſidue. *Ibid.* 257.

Treſpaſs for taking two Things, and but one found, is ill.

C **In** Treſpaſs for taking a Coat and Mantua, if the Jury find the Defendant guilty *quoad le tunick*, and aſſign Damages, but ſay not any Thing as to the Mantua, it is ill; ſo in Debt for ſeven Pounds, the Jury find *Debet* ſix Pounds, and ſaid not any Thing to the Reſidue; all is ill and diſcontinued. 3 *Lev.* 55.

If the Jury find a Matter ſpecially, and conclude incongruouſly, the Concluſion is idle.

D **If** the Jury find a Matter ſpecially, and do conclude a Thing which cannot ſtand and agree with their finding, the Concluſion is idle, and ſhall be taken to ſignify nothing: By *Rolle*, Chief Juſtice, 1654. *B. S.* For the Verdict was perfect without the Concluſion, and therefore an idle and impertinent Thing ſhall not vitiate that which was well found without ſuch a Concluſion.

Where the Jury may find a Matter of Record, though it be not ſhewn to them.

E **The** Jury may find a Matter of Record, if it be very antient, or if the Record be imbezilled, or cannot be found upon Search made for it; notwithſtanding what is held in *Scholaſtica*'s Caſe to the contrary, although the Record be not ſhewed to the Jury: By *Rolle*, Chief Juſtice. So alſo they may a Deed, or a Will, the Contents being well proved by Witneſſes. *Vaugh.* 77.

Where the Jury may divide their Verdict.

F **By** *Glyn* Chief Juſtice: *Trin.* 1658. If an Action be brought for five hundred Pounds, the Jury may find Part paid againſt the Plaintiff, and Part unpaid againſt the Defendant, and ſo divide the Verdict.

The Court will take a Verdict, though given againſt their Directions.

G **In** the Caſe of Sir *Job Harvey*, upon a Trial at the Bar, it was controverted, if the Jury do find a Verdict contrary to the Directions of the Court, whether it was a good Verdict, or not, and whether the Court ought to take it; but at length the Court took the Verdict, though it was given againſt their Direction.

Why the Statute of Jeofails helps a Verdict.

H **The** true Reaſon why the Statute of Jeofails helps after a Verdict, is, becauſe it is ſuppoſed, That the Matter left out was given in Evidence, and that the Judge did direct accordingly; or elſe the Verdict could not be found. 1 *Mod.* 292.

Inſtructions how to draw up a Verdict.

I **Note,** In the firſt Place, before you go about to draw up your Verdict, be it either General or Special, carefully read over the Iſſue, and draw it up exactly by the Iſſue. For if the Verdict doth not in all Things anſwer the Iſſue, it is a void Verdict.

A **The** Court cannot give any Judgment upon an ambiguous Finding; but the Matter muſt be poſitively found. *Show.* 539.

Verdict muſt be poſitive, not ambiguous.

B **In** Treſpaſs and Aſſault, two plead *ſon Aſſault*, and one pleads *non cul.* both Iſſues found for the Plaintiff, and ſeveral Damages upon each Iſſue, and naught: For it is one intire Offence by the Plaintiff's Declaration, and when all are found Guilty, the Damage ought to have been intire; but in Treſpaſs againſt ſeveral, if one be found Guilty in part, and the others in all, the Damages ſhall be ſeveral. *Cro. Eliz.* 860. *pl.* 32.

Battery againſt three who plead ſeverally, and are all found Guilty; the Damage muſt be entire.

Not ſo in Treſpaſs.

C **Where** a Verdict is given by thirteen Jurors, it is a void Verdict; becauſe no Attaint will lie. *Thornton* and *Dodſon*, *Paſch.* 33 *Car.* 2. *Rot.* 87.

A Verdict given by thirteen Jurors, is void.

D **Although** a Verdict was found for the Plaintiff as to ſeveral *Modus's*; yet there not appearing to be a ſufficient *Modus* in Law, a Conſultation was granted. *Lutw.* 1052, 1053.

A Conſultation may be granted, if a ſufficient *Modus* be not found.

E **If** a Jury find a Point in Iſſue, and a ſuperfluous Matter over and above, that ſhall not vitiate the Verdict. *Mod. Caſes* 4.

The Finding a ſuperfluous Matter with a Point in Iſſue, ſhall not hurt the Verdict.

F **If** ſo much is found in a Verdict as will ſerve the Plaintiff's Turn, although not directly according to the Iſſue, it is well enough. 1 *Lev.* 142. 1 *Mod.* 4, 5, 6.

If the Verdict will ſerve the Plaintiff's Turn, although not directly according to the Iſſue, it is good.

G **Upon** two ſeveral Conſiderations the Defendant promiſed to do two ſeveral Acts, upon *non Aſſumpſit*, and a Verdict for the Plaintiff finds *quod Aſſumpſit*, and aſſeſs Damages to twenty Pounds, to be paid in dying, if by Law it may be, and aſſeſs for Coſts twenty Shillings, and Judgment was entered for the twenty Pounds and Coſts: And moved, That they find generally *quod Aſſumpſit*, and do not divide them, being ſeveral, but held good: For if they were upon ſeveral Promiſes, yet *non Aſſumpſit* pleaded, and the finding *quod Aſſumpſit* is good: As to the other, the finding the *Aſſumpſit*, is good, and what comes after is void. *Cro. Car.* 219. *pl.* 4.

Where there are two ſeveral Conſiderations, and two ſeveral Acts to be done; one *non Aſſumpſit* pleaded, and a Verdict *quod Aſſumpſit* is good.

The Jury aſſeſs Damage twenty Pounds, to be paid in Dying, if allowable by Law, it is a good Verdict for the twenty Pounds, and void for the other.

H **In** an Avowry for Rent, part was found for the Plaintiff, and Damages and Coſts (which ſhould not have been) and part for the Avowant, the finding of Damages and Coſts for the Plaintiff, is void; for when part is found for the Avowant, he ſhall have a Return with Damages and Coſts. *Cro. Jac.* 473. *pl.* 3.

In an Avowry for Rent, part is found for the Plaintiff with Damages and Coſts, and part for the Avowant; how the Judgment ſhall be.

A Cuſtom found by a Jury, they need not to find more than makes for the Plaintiff.

In Iſſue upon a Cuſtom for a Common, the Jury find the Cuſtom, and that the Commoners had uſed to pay it for a Hen a Year; (*Note*, It was not Paying, for then it had been a Condition:) And adjudged for the Plaintiff, for he need not to ſhew more than makes for him. And for the Hen, he who is to have it may diſtrain the Commoners Cattle upon his own Land. 5 *Rep.* 78. *b.* 79. A

How to find a Verdict upon an Iſſue in an Avowry, and how in Treſpaſs and Reſcous.

In an Avowry all the Tenure alledged is material to be found; but in Treſpaſs and Reſcous, part will do. *Cro. Eliz.* 799. *pl.* 49. See Title Avowry. B

A Verdict found upon an inſufficient Plea full to the Iſſue, is good.

The Defendant pleads an Entry before the Rent due, but did not ſay that he expelled him, or held him out. And upon an Iſſue *non Intravit*, it was found for the Defendant, and he had Judgment tho' the Plea was inſufficient, yet the Verdict was full to the Iſſue. *Hob.* 326. *Cro. Eliz.* 778. *pl.* 11. C

Verdict for the Plaintiff, and Judgment for the Defendant.

Where it appears to the Court, that the Plaintiff hath recovered a Verdict without Cauſe of Action, the Court will give Judgment for the Defendant. 1 *Plow.* 66. *b.* D

Where an ill Plea is found for the Plaintiff, Judgment ſhall be for the Plaintiff.

But if found for the Defendant, he ſhall not have Judgment.

In Debt upon a Bill, Payment is no Plea; but if Iſſue be joined thereupon, and found for the Plaintiff, it is good, and the Judgment ſhall be for the Plaintiff, becauſe it is found that he did not pay: But if he found for the Defendant, foraſmuch as it was an ill Plea, no Judgment ſhall be for the Defendant. 5 *Mod.* 226. E

The Court are not to regard what the Jury find contrary to the Agreement in Pleading.

What is agreed in Pleading, though the Jury find the contrary, the Court is not to regard it. 1 *Mod.* 6. 2 *Lutw.* 1216. F

A Jury find more than the Iſſue, it is void for the Reſidue.

A Jury find the Iſſue and more, it is good for the Iſſue, and void for the Reſidue. 2 *Lev.* 253. G

The Matter ought to be found as pleaded.

Where there is a Special Plea, it ought to be found as it is pleaded; as where the Iſſue was if ſeiſed in Fee of two Acres, it was found ſeiſed in Fee of a Moiety. *Cro. Eliz.* 506. H

Damages found *occaſione Aſſumptionis*, whereas it ſhould be *occaſione non performationis Aſſumptionis*.

The Jury find that the Plaintiff *ſuſtinuit dampna occaſione Aſſumptionis*, whereas it ſhould be *occaſione non performationis Aſſumptionis*, and therefore revers'd. *Cro. Eliz.* 781. *pl.* 18. See *Cro. Jac.* 684. *pl.* 2. *Contra.* I

Jury find Aſſets in *Ireland*, how it is.

The Jury find Aſſets in *Ireland*, is good; for the finding Aſſets is ſufficient, and ſaying in *Ireland* is idle and void. *Cro. Jac.* 55. *pl.* 25. K

A **A Diſcontinuance** *quoad* Part, is helped by the Statute of 32 *H.* 8. *cap.* 30. 3 *Lev.* 40.

A Diſcontinuance as to Part, helped by the Statute of 32 **H.** 8. **cap.** 30.

B **Treſpaſs** for three Things, the Verdict finds two, but nothing for the other, it is a good Diſcontinuance. 3 *Lev.* 55.

Treſpaſs as to three Things, the Jury find two, and nothing to the third, it is a Diſcontinuance.

C **The** Jury caſt Lots for their Verdict, which being proved by Affidavit, the Verdict was ſet aſide. 2 *Lev.* 140.

Jury caſt Lots for their Verdict, it was ſet aſide.

D **See** Title **Jury and Jurors**, how Jurors have been fined for Eating, Drinking, or having Eatables in their Pockets.

Miſdemeanor of Jurors.

E **Amendment** of a Special Verdict after Entry upon the Roll, by an Entry of a Leaſe by Indenture found by the Jury *prout*, but not put into the Verdict. 4 *Rep.* 52. *b.* See Title **Aſſize.**

Amendment of a Special Verdict after an Entry on the Roll.

F **After** a Verdict return'd in Court, it cannot be amended upon any Suggeſtion; but if there be any Miſpriſion, Suggeſtion ought to be made of it before the Verdict return'd, *Cro. Eliz.* 112. But a Miſtake of the Clerk of the Aſſizes appearing to the Court, was ordered to be amended. *Cro. Eliz.* 150.

Where a Verdict may not be amended.

And where it may.

G **A Verdict** will not help a bad Writ; but if there be no Writ, it is helped by a Verdict. 4 *Annæ*, *B.R.*

A Verdict will not help a bad Writ; but no Writ is helped.

H **The** Court will amend a Special Verdict, where it is agreed by the Notes to bring the Special Matter in Queſtion.

Where the Court will amend a Special Verdict.

I **Where** the Jury have given a Verdict which is accepted by the Court, and recorded, be it perfect or imperfect, the Jurors are for ever diſcharged. But if the Verdict be ſo imperfect that a Judgment cannot be given upon it, a *Venire facias de Novo* ſhall be awarded by the Court to try the ſaid Iſſue by others; and there ſhall not be a new *Niſi Prius*. 8 *Rep.* 65. *b.* 66. *a.* But there ſhall be a new *Venire de Novo*, for a Jury having once given their Verdict, although it be imperfect, yet they ſhall never be ſworn again upon the ſame Iſſue, unleſs it be in Caſe of Aſſize, where the Party is to recover by the View of the Recognitors. *Cro. Jac.* 210. *pl.* 2. 211.

Where a *Venire de Novo* ſhall be awarded.

The *Niſi Prius* muſt be the ſame, but the *Venire* muſt be new, and a new Jury.

K **Where** upon an imperfect Verdict a *Venire facias de Novo* iſſued, and then a General Verdict againſt both Defendants, and moved that it was void; becauſe by the ſame Roll it appears, That one of the Defendants was found Not guilty, as appears by the Roll: But *per Curiam*, The firſt Verdict was

Where the firſt Verdict is ſet aſide, and a *Venire facias de Novo*; the firſt is as if there never had been any, and it is the laſt that is the Verdict.

meerly void, and is as no Verdict, and all that is found therein is void, and not to be reſpected, although entered in the ſame Roll, wherefore the ſecond Verdict is good. *Cro. Jac.* 627. *pl.* 21.

Not ſuch preciſe Form in Special Verdicts, as in Pleading.

A Such preciſe Form is not by Law required in Special Verdicts, which are found by the Lay-Gents, as is in Pleading, which is done by Men learned in the Law. 9 *Rep.* 51. *b.*

Verdict without Damages is imperfect;

But a Releaſe of them makes it good.

B In a Writ of Annuity, the Jury found the Arrears, but neither Damages nor Coſts; which was an imperfect Verdict, and could not be ſupplied by Writ of Inquiry. *Note*, Inſufficient aſſeſſing of Damages, and no aſſeſſing of Damages, is all one. But upon the Plaintiff's releaſing of his Damages and Coſts, he had Judgment.

An Inſtance where ſuch Verdict was ſet aſide.

C In a Cauſe which came to be tried at *Guildhall*, the Counſel on both Sides agreed to find the Matter ſpecially; and Notes were for that Purpoſe drawn up, and ſigned by them. Thereupon the Chief Juſtice told the Jury, That it being Matter in Law, it was by the Counſel on both Sides left to the Determination of the Court. The Foreman of the Jury, (who it was thought was brought in for that Purpoſe, being in *Bethel's* Time when he was Sheriff, and Matter of Prerogative in Queſtion) told the Chief Juſtice, That the Court nor Counſel ſhould not make any Verdict for them; they as an *Engliſh* Jury would make their own Verdicts themſelves, and gave a general Verdict for the Defendant. But there being a Bill in Chancery depending about this Matter, and an Injunction moved for after this Verdict, the Lord Chancellor *Finch* declared, That he had formerly ſo great an Opinion of *London* Juries, that if his whole Eſtate lay at Stake, he would willingly try it by a *London* Jury: But, ſays he, they have ſo miſbehaved themſelves in this Cauſe, that I had rather ſee my Houſe on Fire than hear of ſuch another Verdict: And thereupon he granted a perpetual Injunction.

Where the Court will not order a Special Verdict to be entered *ex Parte*.

D The Court will not compel the Defendant's Council to ſubſcribe a Special Verdict: But if he refuſes to do it, the Court will order it to be entered *ex Parte*, and Counſel ſhall not be heard for Party who refuſed to join in it.

A Special Verdict need not to be ſo exact and particular as Pleading is.

And why?

E There is a Difference between Pleading, which is *per peritos*; and a Special Verdict, which is the Saying of the *Lay-Gents*; and therefore the Miſtake of a Letter, nor the Addition of a Word ſhall not hurt a Verdict ſo long as *conſtare poteſt* that it is the ſame Place, and the ſame Land. See the Caſe 1 *Sid.* 27.

A **An** Action of Battery was brought againſt three Defendants, who plead *ſon Aſſault*: The Jury find that two of the Defendants aſſaulted the Plaintiff firſt, and aſſeſſed Damages; and as to the third Defendant, they find that the Plaintiff aſſaulted him firſt: It was moved, That the Plea and Iſſue was joint, and that the Jurors cannot ſever it, *Curia*. It is joint and ſeveral. And thereupon the Plaintiff had his Judgment againſt the two who were found Guilty. *Mich.* 34 *Car.* 2. *B. R.* But Note, by a late Statute made 8 & 9 *W.* 3. *cap.* 10. *For preventing of frivolous and vexatious Suits, &c.* He who is found Not guilty ſhall have his Coſts. See in Title **Judgment**, and Title **Nolle Proſequi.**

Treſpaſs and Battery againſt three, who plead *ſon Aſſault*; the Jury find that two of them aſſaulted the Plaintiff firſt, and aſſeſs'd Damages: And as to the third, that the Plaintiff aſſaulted him firſt.

It is joint and ſeveral, and the Plaintiff had his Judgment.

8 & 9 W. 3. cap. 10.

B **Where** the Subſtance of the Iſſue is found, which is ſufficient for the Plaintiff to recover, although it be not found *modo & forma*, yet the Verdict is good. *Hob.* 73.

Where the Subſtance of the Iſſue only is found, it is good.

C **A Special** Verdict may be given upon a Special *abſque hoc*. 3 *Leon.* Caſe 185. *fol.* 136.

A Special Verdict may be upon an Iſſue upon a Traverſe.

D **In** an Avowry for Damage-feaſant upon a Leaſe made, which commenced at *Michaelmas*, upon no ſuch Leaſe pleaded, the Jury found it to commence from *Michaelmas*, which was the Day after, but yet held good; becauſe there is ſufficient found to excuſe the Tort ſuppoſed by him who diſtrein'd; but if it had been for a Title it had not been good. *Moore*, Caſe 1188.

Where a Verdict finds contrary to the Iſſue, but excuſes a Tort, it is good.

But not in Caſe of a Title.

E **A Man** ſays that he was ſeiſed of a Meſſuage, and ſixty Acres of Land, ſixty Acres of Meadow, and eighty Acres of Paſture, and ſo preſcribes for Common Appurtenant, in two hundred Acres of Waſte, of which the Defendant had incloſed three Acres: The Verdict finds that he had Common to a Meſſuage, and ninety Acres of Land, Meadow and Paſture: So it was moved, That this was not the Common, as the Plaintiff declared for. *Curia*. The Common is but the Inducement to the Action, the Subſtances is the Incloſure which did the Tort. *Cro. Jac.* 630.

The Verdict need not to find preciſely to the Inducement of the Action, but only to the Subſtance.

F **Avowry** for *liberum tenement*, the Jury found that it was the Freehold of his Wife, this is found againſt him; for it ſhall be intended his own Freehold. *Cro. Eliz.* 524. *pl.* 52.

Avowry for his Freehold, and it was found to be his Wife's Freehold, it is found againſt him.

G **In** Trover the Declaration was *de una longa menſa cum plateis & abicis culinariis*, Anglice, *A long Table with Shelves and Dreſſers*; it was moved in Arreſt of Judgment, that this was incertain *non allocatur*, for after Verdict it ſhall be good if by any Poſſibility it may. *Skin.* 289.

Trover.

In an Action for Negligence in keeping Fire.

A **In** an Action on the Caſe, *&c.* for negligently keeping his Fire, *&c.* and that the Defendant had kindled a Fire in his Cloſe, which he, *tam improvidie & negligenter ſervavit,* that it burnt a Cloſe of Heath of the Plaintiff; moved in Arreſt of Judgment, that it does not appear to be done by the Command of the Maſter; adjudged for the Plaintiff; for this being after a Verdict, they are now upon the Record; and it was Matter of Evidence, whether it was his Fire or not. *Skin.* 681.

For want of *Sciens* or *Scienter.*

B **In** a Declaration for keeping a Bull which uſed to run at Men, not ſaying *ſciens* or *ſcienter,* was held naught after Verdict. *Salk.* 662.

The like.

C **For** keeping a Boar *ad mordend' animalia conſuet' ſcienter, &c.* held well after a Verdict. *Ibid.*

Defective Title.

An Incertainty in the Count will aid a Title defectively ſet forth, but not a defective Title. *Salk.* 364, 664.

The Juries finding on *Nil debet.*

D **In** Debt on a ſingle Bill, and *nil debet* pleaded, the Jury find *nil debet* to part, and *debet* to the Reſidue, held well after Verdict. *Ibid.*

Evidence.

E **A Verdict** may be taken upon any Part of the Declaration to which the Evidence is applicable. *Salk.* 133.

Damages.

F **A Judgment** arreſted, becauſe more Damages given then ought. *Salk.* 663.

The like.

G **Where** Damages are given in Treſpaſs laid at a Time not come, it ſhall be intended another Time was proved. *Salk.* 662.

Nil dicit.

H **No** finding of a Jury can diſcharge a Man againſt a Confeſſion by *Nil dicit.* *Ibid.* 23.

Special Verdict.

I **See** where a Special Verdict found on a ſingle Point. *Ibid.* 249.

Declaration.

K **Where** it aids a bad Declaration. 3 *Salk.* 236. *Carthew* 6, 86, 304.

Where a Verdict will aid.

L **It** will not help where the Matter is not actionable, or where the Party hath taken a wrong Remedy. 3 *Salk.* 30.

Diſcontinuances.

M **Diſcontinuances** are helped by the Statute of Jeofails after a Verdict. *Ibid.* 130.

Juryman.

N **Where** it was ſet aſide for the Miſbehaviour of a Juryman. *Ibid.* 372.

Ill Verdict.

O **Where** the Defendant was charged with ſeveral Treſpaſſes, and found guilty as to one; and the Jury finding nothing as to the other, the Verdict is ill. *Ibid.* 372.

Special Verdict.

P **Where** the Jury may give a general Verdict, and where they may find the Matter ſpecially. *Ibid.* 373.

The finding of the Jury.

Q **Of** Verdicts, where more is found than what is Iſſue, and where leſs is found. *Ibid.* 374, 375.

A **See** a Special Verdict amended on paying Coſts. *Mod. Caſes in Law and Equity* 48.
Amendment.

B **Quære,** If a Verdict on a *Quo Warranto* Information could be ſet aſide for Miſbehaviour of a Juryman. (And *Note,* all the Judges of *England* were divided on the Point.) *Ibid.* 201, 202 to 208.
Juryman.

C **A Verdict** given on good Evidence, and ſo certified by the Judge, ought not to be ſet aſide. *Ibid.* 134.
Evidence.

D **Where** the Defendant is acquitted in any Caſe on a Criminal Proſecution, it ſhall not be ſet aſide. *Ibid.* 208.
Acquittal.

E **Motion** to ſet aſide a Verdict, becauſe the Agreement was in the Disjunctive, but ſet forth in the Copulative, denied. *Ibid.* 239.
Variance between the Agreement and Verdict

F **Where** ſeveral Iſſues are joined, a Verdict finding one and not the other, is ill. (*Pro toto.*) *Ibid.* 3.
Ill Verdict.

G **A Verdict** amended by the Notes of the Clerk, and Poof of the Matter given in Evidence on paying Coſts. *Ibid.* 49.
Amendment.

H **Motion** to ſet aſide two Verdicts, becauſe the *Diſtringas* was not ſtamp'd, but denied. (*Vide* **Stamp-Duty.**) *Ibid.* 226.
Stamp Duty.

I **Where** Words may be taken in a Doubtful Senſe, they ſhall be taken in that which will ſupport the Verdict, *&c.* *Ibid.* 240.
Conſtruction of Words.

K **Words** that are falſe *Latin* are cured by a Verdict. *Ibid.* 380.
Falſe *Latin.*

L **Where** a Thing ſhall be intended after a Verdict. *Carthew* 131.
Intendment.

M **Where** it may be given in Evidence againſt one who is neither Party or privy to the Suit. *Ibid.* 180.
Evidence.

N **Where** it cures inſenſible Words. *Ibid.* 131.
Inſenſibility.

O **Where** it cures the Inconſiſtency of the Action. *Ibid.* 189.
Inconſiſtency.

P **Where** Diſcontinuance of Proceſs is cured by a Verdict. *Ibid.* 206.
Diſcontinuance.

Q **Where** the not well aſſigning the Breach of an Agreement is cured by a Verdict. *Ibid.* 272.
Breach.

R **Where** a Verdict doth not cure an immaterial Iſſue. *Ibid.* 371.
Immaterial Iſſue.

S **Where** it helps an impoſſible Day laid in the Declaration. *Ibid.* 389.
Day in the Declaration.

T **Where** it helps every Thing which is to be proved at a Trial. *Ibid.*
Evidence.

Evidence. **Where** a Verdict was ſet aſide for Irregularity. *Carthew* 499. A

What aided. **Surpluſage**, an ill Bar, or a Diſcontinuance may be aided by Verdict. *Comberb.* 57, 170, 331, 363, 379. B

The like. **What** other Faults ſhall be aided by the Verdict. *Ibid.* 149, 150, 284, 426, 427. C

Nil debet. **In** *Indebitat' Aſſumpſit*, *nil debet* held a good Plea, and Iſſue after a Verdict. *Ibid.* 426. D

Trial in a wrong County. **Trial** in a wrong County is aided by Verdict, and the Statute 16 *&* 17 *Car.* 2. *Ibid.* 472. E

Damages. **Where** a Jury are enveigled to give more Damages than they ought, 'tis not aided by Verdict. *Ibid.* 357, 442. F

Ill Verdict. **On** a Verdict on two *Aſſumpſits*, if one be ill, the Plaintiff can't have Judgment. *Ibid.* 303 and 310. G

Judgment on a Confeſſion in the Plea. **Where** a Verdict on an immaterial Iſſue tried ſhall be ſet aſide, and the Judgment be given on the Defendant's Confeſſion of the Treſpaſs in his Plea. *Ibid.* 370, 380. H

Eſtoppel. **Where** a Verdict in another Action of Treſpaſs againſt one of the Plaintiffs may be pleaded by way of Eſtoppel. *Ibid.* 166, 167. I

Vicar.

A Vicar, what. **A Vicar is he that** gerit vicem Perſonæ, **to ſupply his Place in his Abſence, and is a Spiritual Perſon.** 1 Leon. 182. K

Rector and Vicar. **The** Difference between a Rector and a Vicar. 3 *Salk.* 377. L

Vicarages. **Vicarages** are endowed out of the Rectory. *Ibid.* 378. M

Augmentation. **Where** a Vicar may ſue to have his Vicarage augmented. *Ibid.* N

View.

See **Venue and Venire.**

A A View is for a Jury to ſee the Land or Thing in Queſtion, and lies in Ejectment, Waſte, and ſeveral real Actions; and alſo in Aſſizes of Novel Diſſeiſin, where at leaſt Six of the Recognitors muſt have the View before the Aſſizes.

View, what.

B The Jury ought not to view the Place in Queſtion betwixt the Plaintiff and the Defendant, without the Direction of the Court, although the Parties will conſent. By *Glyn* Chief Juſtice. *Paſch.* 1656. *B. S.* For the Court is to direct all the Proceedings in Law, in order to the Trial, as being indifferent, and beſt knowing to do that which is for the expediting of Juſtice.

Jury ought not to view the Place without Direction of the Court

C View denied where it ought to be granted, is Error; granted where it ought not to be, Error or not; denied *quia conſtat Cur.* that the Huſband died ſeiſed. 2 *Lev.* 117.

View denied where it ought to be granted, is Error.

D The Court will grant that the Jury ſhall view the Thing in Queſtion for them to try, if the Plaintiff and Defendant will conſent unto it, otherwiſe not: *Mich.* 1650. *B. S.* *Nov.* 15. But the Jury muſt find without a View, according to the Light they have received from the Evidence, as their Conſciences ſhall direct them. The granting of Views is Cauſe of Delay, which the Court will be no Cauſe of, except the Parties freely conſent to it.

The Court will not grant a View unleſs both Parties conſent.

E Formerly there could not have been a View in a Perſonal Action, but upon withdrawing of a Juror after they were ſworn, and Conſent of the Parties by a Rule of Court for that Purpoſe. But now by 4 & 5 *Annæ*, it is enacted, That in any Action to be brought in the Courts at *Weſtminſter*, it appearing to the Court, That it will be proper that the Jurors who are to try ſuch Iſſue ſhall have a View of the Places in Queſtion, the better to underſtand the Evidence

Formerly there could not have been a View in a Perſonal Action, until a Jury ſworn, and a Juror withdrawn by Conſent.

But by the Statute of 4 & 5 Ann. *For the Amendment of the Law*, if the Court ſhall think it proper that there be a View before Trial.

upon the Trial; in ſuch Caſes the reſpective Courts may order Special Writs of *Diſtringas*, or *Habeas Corpora*, to iſſue out to the Sheriff, commanding him to have Six out of the firſt Twelve of the Jurors therein named, or ſome greater Number of them, at the Place in Queſtion, ſome convenient Time before the Trial; who then and there ſhall have the Matters in Queſtion ſhewn to them by the two Perſons named in the Writ of *Diſtringas*, to be appointed by the Court; and the ſaid Sheriff, or other Officer, who is to execute the ſaid Writ, is ſpecially to return upon the ſame Writ, the View made according to the Command in the Writ. A

No Evidence to be given to the Jury upon a View.

Note, Upon a View, the Thing in Queſtion is only to be ſhewn to the Jury, but no Evidence to be given on either Side. B

How the View to be in Waſte.

If Waſte be aſſigned in ſeveral Corners of a Wood, the Jury is to have the View of every Corner; *aliter* where Waſte is aſſigned in the whole Wood. 1 *Leon.* 259. C

How in every Room.

If Waſte be aſſigned in every Room of an Houſe, the View of the Houſe generally is ſufficient. *Ibid.* D

How it as where they had not the View of the Whole.

Where in ſeveral Places Waſte is aſſigned, and the Jury had not the View of ſome of them, of that they may find no Waſte done. *Ibid.* E

Where grantable.

A View is grantable only where the Title is in Queſtion. *Salk.* 665. F

Venire.

Before the View is granted, the *Venire* muſt be return'd, and then the Rule is, that ſo many of the Panel ſhall view it, *&c.* *Ibid.* G

How a View is to be.

See the Method of Proceeding in Caſe of a View. *Ibid.* H

Vi laica amovenda. See **Reſtitution.**

Vill.

A Vill, what.

VIlla eſt ex pluribus manſionibus vicinata, & collata ex pluribus vicinis. 1 Inſt. 115. b. I

Vill and Pariſh all one; yet there may be two Vills in one Pariſh.

Vill and Pariſh ſhall be intended all one. *Cro. Jac.* 263. *Wrey*'s Caſe, yet there may be two Vills in a Pariſh. *Ibid.* 120. K

A **The** Conſtable of one Vill cannot execute his Office in another Vill. 24 *Car. B. R.* For every Vill hath a particular Conſtable or Officer, and a confined Power according to their ſeveral Limits.

The Conſtable of one Vill cannot execute his Office in another.

B **There** is an antient Book called *Liber Villarum*, wherein are contained the Names of all the Vills and Pariſhes in *England, viz.* ſuch as were at the Time of the making that Book; but there are now many more than there were then. *Paſch.* 24 *Car. B. R.* This Book, I take it, is in the Exchequer.

The Book called *Liber Villarum.*

Unity of Poſſeſſion.

See {Appurtenant.
Eaſement.

C **UNity of Poſſeſſion is where a Man hath a Right to two ſeveral Eſtates, and holds them together in his own Hands.**

Unity of Poſſeſſion, what.

D **Unity** of Poſſeſſion extinguiſheth all ſuch Privileges that are not expreſly neceſſary; but a Way to a Cloſe, or Water to a Mill, *&c.* which are expreſly neceſſary are not extinguiſhed. *Peers* and *Lucy. Trin.* 7 *W.*

Unity of Poſſeſſion extinguiſhes all ſuch Privileges as are not abſolutely neceſſary; but a Way to a Cloſe and a Water-Will, are expreſly neceſſary.

E **A Way** of Eaſe may be extinguiſhed by Unity of Poſſeſſion; but a Way of Neceſſity, or a Water-Courſe, cannot. *Latch.* 154. See *Cro. Jac.* 170. *pl.* 10.

What Ways may be extinguiſh'd by Unity, and what not.

F **A Fence** may be extinct by Unity, becauſe it is of Neceſſity: For *ab origine* there were no Fences. *Ibid.*

Fences may be extinct by Unity.
And why?

G **A Rent**, or a Way of Eaſe, may be extinct by Unity, becauſe they do not exiſt during the Unity, and therefore they are gone: But it is otherwiſe where the Thing doth exiſt, notwithſtanding the Unity, as a Water-Courſe, *&c. Latch* 153.

What Things may be extinct by Unity, and what not.

Unity extinguiſhes Common Appendant and Appurtenant.

Unity of Poſſeſſion will extinguiſh Common Appendant and Appurtenant. *Cro. Eliz.* 570. *pl.* 6. See *Cro Eliz.* 794. *pl.* 40. But not Common for Arable Land. *Moore*, *Caſe* 651, 654. A

Where the Vendor ſhall have a Way, tho' not reſerved in his Grant.

Although a Grant is made of Part of the Land through which the Party Vendor hath a Way, and doth not reſerve it in his Grant; yet the Party vending ſhall have a Way becauſe of Neceſſity. *Lutw.* 1489. B

Where a Rent, Profits or Common ſhall be extinct.

Where a Man hath as durable and as high an Eſtate, as well in the Land as in the Rents, Common and Profits, iſſuing out of thoſe Lands, there the Rent, Common and Profit is extinct. 4 *Rep.* 38. *a.* C

Where Unity of Poſſeſſion is a Diſcharge of the Payment of Tithes.

Where Unity of Poſſeſſion of the Parſonage, and the Lands tithable in one Hand, at the Time of the Diſſolution of Monaſteries, is a Diſcharge of the Payment of Tithes. See *Hov.* 298, 299. D

No Unity of Poſſeſſion ſhall ſuſpend or extinguiſh Tithes.

No Unity ſhall extinguiſh or ſuſpend Tithes; but notwithſtanding any Unity they remain *in Eſſe*, ſo that they may be demiſed or granted to any Spiritual Perſon, notwithſtanding ſuch Suſpenſion. 11 *Rep.* 13. *b.* E

They do not iſſue out of Land.
Unity.
Releaſe.

Tithes are not iſſuing out of Lands, neither can Unity of Poſſeſſion extinguiſh them, neither are they extinguiſhed by a Releaſe of all Right to Land. 1 *Leon*, *Caſe* 336. F

Where a Unity ſhall be a Diſcharge of Tithes, and where of the Payment of Tithes.
21 H. 8. cap. 13. ſect. 21.

A Perpetual Unity till the Diſſolution, ſhall be a Diſcharge of the Payment of Tithes, by the Statute of 31 *H.* 8. *cap.* 13. *Sect.* 21. *Ibid.* 14. *b. Note*, It is not ſaid in the Statute, ſhall be diſcharged of Tithes, but of the Payment of Tithes. See that Statute. 11 *Rep.* 14. *b.* G

The ſeveral Qualifications that a Unity ſhall have to be a Diſcharge of Tithes, by the
31 H. 8. cap. 13.

1. **Such** Unity muſt have been *juſta*, *libera*, *æqualis*, and *perpetua:* It muſt have been *juſta*, claimed by good and lawful Title, and not by Diſſeiſin. H

2. *Æqualis*, *viz.* There muſt have been a Fee-ſimple, both in the Lands and the Tithes. I

3. **It** muſt have been *libera*, free from the Payment of any Tithes in any Manner. K

4. **It** muſt have been *perpetua*, Time out of Mind, that ſuch Religious Houſes were endowed, and ſuch Religious Perſons had in their Hands both the Land and Rectory, before the Memory of Man. *Godolph.* *fol.* 454, 455. L

Void and Voidable.

See { **Acceptance.**
Condition.
Leaſe, &c.

A **SOme Things are abſolutely void, and ſome are voidable; which ſee in the ſeveral Paragraphs following.**

Void and Voidable, what.

B **A Thing** is void which is done againſt Law at the very Time of the doing of it, and ſuch a Thing done ſhall bind no Perſon; but a Thing which is only voidable, and not abſolutely void, is a Thing which he that did it, ought not to have done; yet when it is done, he that did it cannot avoid it, but it may by ſome Act in Law be made void by his Heir, *&c.* 21 *Car. B. R.*

A Thing done againſt Law is void; but a Thing which he who did it, ought not to have done, is only voidable.

C **If** a Judge of an inferior Court takes not the Oaths according to the Statute, all the Proceedings adjudged void in Error thereon. 2 *Lev.* 184. *contra. Idem* 243.

If the Judge of an Inferior Court take not the Oaths, all the Proceedings are void.

D **Where** a Grant is void at the Commencement, no Act afterwards can make it good. *Daliſ.* 64. *pl.* 25.

A void Grant can never be made good.

E **A Leaſe** for Life, which is only voidable, muſt be made void by Re-entry, it being a Freehold conveyed by Livery: But where a Leaſe for Years is abſolutely void, there needs no Re-entry; but if the Leſſee will not avoid the Poſſeſſion, the Leſſor may bring his Ejectment to try the Title without any Entry; but in the former Caſe he cannot. 3 *Rep.* 65. *a.*

A void Leaſe is of it ſelf void; but a voidable Leaſe muſt be made void by Re-entry.

F **Where** a Leaſe is voidable, Acceptance of the Rent will make it good: But where it is void, no Acceptance, or other Act can make it good. 3 *Rep.* 64. *b.*

Where a Leaſe is voidable, what makes it good.

Where

A voidable Deed muſt be avoided by Pleading.

Where a Deed is a voidable Deed at the Time of Pleading, as if the Seal is broke, or if it be delivered by Dureſs, *&c.* the Obligor muſt not plead *Non eſt factum:* Becauſe when the Action was brought it was his Deed, and muſt be avoided by Special Pleading. 5 *Rep.* 119. *a.* A

So alſo in Caſe of an Act of Parliament.

So alſo in Caſe of an Act of Parliament, which ſays, That a Bond or other Deed ſhall be void; yet the Law hath ordered it to be made void by Pleading. 5 *Rep.* 119. B

Non eſt Factum may be pleaded where Alterations are made.

When a Bond was once a Deed, and before Action brought it was razed, or Alterations made in it, the Defendant may plead *Non eſt Factum.* 5 *Rep.* 119. *b.* C

Infant or *Non Compos.*

Bond of an Infant or *Non Compos* is void. *Salk.* 427, 675. D

Non Compos.

So the Surrender of Tenant for Life being *Non Compos*, to him in Remainder, is void. *Ibid.* 576. E

Judgments.

Erroneous Judgment of Inferior Court is void; but of Superior Court only voidable. *Ibid.* 674. F

Voucher.

See Recovery.

Voucher, what.

Voucher, in the Underſtanding of Law, is when the Tenant calls another into the Court, who is bound to him to Warranty, and is either to defend the Right againſt the Defendant, or to yield him other Lands, &c. in Value; and it extends to Lands or Tenements of Freehold or Inheritance, and not to any Chattel real, perſonal, or mixt. He that voucheth is call'd the Voucher, (vocans) and he that is vouched, is called Vouchee; (warrantatus) The Proceſs whereby the Vouchee is called, is a Summoneas ad warrantizandum, &c. A Recovery with a ſingle Voucher is, when there is but one Voucher; and with a double Voucher is, when the Vouchee voucheth over. And ſo of a treble Voucher. There is alſo a Foreign Voucher, when the Tenant being impleaded within a particular Juriſdiction, as in London, or the like, voucheth one to Warranty, and prays, that he may be ſummoned in ſome other County, out of the Juriſdiction of that Court; which might aptly be called, a Voucher of a Foreigner, de forinſecis vocatis ad warrantizandum. Co. Litt. 101. b. G

A **There** ſhall not be any Counter-plea, but where it is thereby proved, That he who is vouched, had not ſuch an Eſtate whereof he could make a Feoffment. *Cro. Eliz.* 689. *pl.* 25.

Where there ſhall be a Counter-Plea.

B **If** the Tenant will vouch to Warranty a dead Man, or one where there is no ſuch Perſon, the Demandant may be received to ſay, That he is dead, or that there is no ſuch Perſon.

Where the Tenant vouches a dead Man, or one who is not in *eſſe*, the Demandant may aver againſt it.

14 Ed. 4. cap. 18.

Uſage, See { **Cuſtom.** **Inhabitants.** }

Uſes.

See { **Baron and Feme.** **Conſideration.** **Conveyance.** **Deeds.** **Expoſition.** } { **Fine.** **Leaſe, Leſſor, Leſſee.** **Proviſo.** **Recovery.** }

C **Uſes of Land began after the Cuſtom of Property began amongſt Men, as where one ſeiſed in Fee of Land enfeoffed another without any Conſideration, but only meaning that another ſhould be ſeiſed to his Uſe, and that he would take the Profits of the Land, and that the Feoffee ſhould have the Freehold and Poſſeſſion thereof to the ſame Uſe. Now after this, upon good Conſideration, and to avoid divers Miſchiefs, came the Statute of** 27 H. 8. cap. 10. of Uſes, **which united the Uſe and Poſſeſſion together: So that whoever hath the Uſe of the Land hath the Poſſeſſion of it, according to the Uſe that he hath, by Virtue of that Statute. See a large Expoſition of that Statute in** Brent's **Caſe,** 2 Leon. Caſe 25.

Uſes, what.

27 H. 8. cap. 10.

What were the Inventors of Uſes.

There were two Inventors of Uſes, Fear and Fraud; Fear in the Time of Trouble and Civil War, for ſaving of their Inheritances from Forfeiture; and Fraud in Time of Peace to defeat Debts, Wards, Eſcheats, *&c.* *Jones* 127. A

What Lands may be convey'd to Uſes.

All Lands of Inheritances local, as Rents *in eſſe*, Liberties, Franchiſes viſible or local, may be conveyed by Way of Uſe. *Ibid.* B

And what not.

But Inheritances perſonal, as Annuities, *&c.* which have no Relation to Lands, or local Hereditaments, cannot be conveyed by Way of Uſe. *Ibid.* C

What the Statute gives to *Ceſtuy que Uſe.*

27 H. 8. cap. 10.

The Statute of 27 *H.* 8. *cap.* 10. hath two Branches, the firſt gives the Poſſeſſion to *Ceſtuy que Uſe*, in ſuch Manner as he hath the Uſe: The ſecond takes away all the Right of the Feoffees, and gives it to *Ceſtuy que Uſe*, ſo that nothing at all remains to the Feoffees, and *Ceſtuy que Uſe* hath an actual Poſſeſſion without any Entry. 1 *Leon. Caſe* 245. *fol.* 258. and in *fol.* 260. They are only for a Pipe to convey the Lands to others. D

Ceſtuy que Uſe may bring an Aſſize or Treſpaſs before Entry.

Ceſtuy que Uſe is immediately and actually ſeiſed, and in Poſſeſſion of the Land, ſo as he may bring an Aſſiſe or Treſpaſs before Entry againſt any Stranger who enters without a Title; and this by the 27 *H.* 8. of *Uſes*. *Cro. Eliz.* 46. E

There are two Manner of Uſes. F

In eſſe, and in { Reverſion.
Remainder.

In Contingency. { Which by Poſſibility may happen in Poſſeſſion, Reverſion, or Remainder. 1 *Rep.* 121. *b.* G

Lands, Tenements, or Hereditaments, ſhall be proved by ſome Writing ſigned by the Party, who is by Law, or laſt Will, enabled to declare ſuch Truſt, or elſe void.

2 Car. 2. cap. 3. ſect. 7.

4 & 5 Annæ.

A Declaration of what Uſes, Truſts, or Confidences, of any Fines or Recoveries by Deed made or to be made, ſhall be good.

By a Clauſe in the Statute of Frauds and Perjuries. 29 *Car.* 2. *cap.* 3. *Sect.* 7. it is enacted, That all Declarations or Creations of Truſts or Confidences of any Lands, Tenements, or Hereditaments, ſhall be manifeſted and proved by ſome Writing, ſigned by the Party, who is by Law enabled to declare ſuch Truſt, or by his laſt Will, or elſe be utterly void: Then comes the Statute of 4 & 5 *Annæ*, *For the Amendment of the Law*; whereby it is enacted, That all Declarations, or Creations of Uſes, Truſts or Confidences of any Fines or Common Recoveries of any Lands, Tenements or Hereditaments, manifeſted or proved, or which hereafter ſhall be manifeſted or proved by any Deed already made, or hereafter to be made, by the Party who is enabled by Law to declare ſuch Uſes or Truſts, after the levying or ſuffering H of any ſuch Fines or Recoveries, are, and ſhall be good and effectual in the Law, as if the Act of *Frauds* and *Perjuries* had not been made.

A **The** Original of Uſes was the Statute of *Mortmain*, which cramp'd the Clergy ſo much, that they were forced to take Shelter under the Laity, and made Uſe of them (whom they were then ſure of) to purchaſe Lands in Truſt for them, and to their Uſe. Afterwards the Wars between *York* and *Lancaſter* coming on, Truſts increaſed more than ever; and although the Common Law could take no Conuſance of them, yet there were always until *Henry* the VIII's Reign, Clergymen, Chancellors, who were ready upon all Occaſions to decree the Performance of the Truſt and Uſe. *Hill.* 9 *W.* 3. *B. R.*

The Original of Uſes.

B **An** Uſe can be raiſed by two ſeveral Ways: Either,

How many Ways to raiſe an Uſe.

1. **By** Tranſmutation of the Eſtate, *viz.* by departing from the Poſſeſſion. 1 *Plow.* 301. Or,
2. **Without** Tranſmutation of the Eſtate, *viz.* to keep the Land in his Hands without departing from it, and to make the Poſſeſſion to be to the Uſe of another. 1 *Plow.* 301. *b.* *&c.*

C **Those** that are by Tranſmutation of the Eſtate, are

By { Feoffment.
Fine.
Recovery, *&c.*

D **Those** that ariſe without Tranſmutation, are but two Ways, either

1. **By** Bargain and Sale inrolled: Or,
2. **By** Covenant to ſtand ſeiſed to Uſes.

E **There** muſt be a Conſideration to raiſe thoſe Uſes that riſe by Bargain and Sale, and covenant to ſtand ſeiſed; as Conſideration of Money in a Deed of Bargain and Sale inrolled (for without Inrollment the Uſe will not in this Caſe ariſe) and in Caſe of a Covenant to ſtand ſeiſed to Uſes, natural Love and Affection which is for Advancement of the Blood, and Marriage which is for the joining of it, are the only Conſiderations; but where there is a Tranſmutation of the Poſſeſſion, there needs not thoſe Conſiderations, becauſe thoſe Conveyances are more ſolemnly executed than the others are. See *Carter*'s *Rep.* 137, 138, 139, 140. See 2 *Lev.* 9, 54, 75, 223, 225. 3 *Lev.* 306, 370.

There muſt be a Conſideration to raiſe Uſes.

F **A Use** and a Truſt were all one at the Common Law, and did both reſt in Privity, but are now diſtinguiſhed by the Stat. 27 *H.* 8. Which doth direct the Operation of Uſes, but leaves Truſts as they were. *Mich.* 23 *Car.* *B. R.*

An Uſe and Truſt were all one at the Common Law.

G **What** ſhall be an Uſe executed, and not a Truſt. 1 *Lut.* 814, 823. See 1 *Lev.* 30, 55, 235.

What ſhall be an Uſe executed.

The

Limitation of an Uſe at Common Law was only a Matter of Equity.

A **The** Limitation of an Uſe was at the Common Law but a Matter in Equity, and the Party concerned was only relievable upon it in Chancery: *Mich.* 22 *Car. B. R.* But ſince the Statute it is otherwiſe; for now the Law takes Notice of them, and veſts the Uſe in Poſſeſſion.

Feoffments to Uſes are not to be interpreted as Wills.

B **Feoffments** to Uſes have the ſame Acceptation as Deeds at the Common Law have, and are not to be interpreted as Wills are; *Mich.* 23 *Car. B. R.* Which have a more equitable Conſtruction.

An Uſe by way of Covenant or Feoffment is all one.

C **It** is all one whether an Uſe be raiſed by way of Covenant, or by way of Feoffment: *Mich.* 24 *Car. B. R.* So that there be a good Conſideration for the raiſing of it; for a Thing may be well done divers Ways in many Caſes.

The two main Pillars of Uſes.

D **Privity** of Eſtate and Confidence in the Party, are the two great Pillars by which Uſes are ſupported: *Paſch.* 1650. *B. S.* 18 *Maii.* For without theſe, Uſes would ſoon fall to the Ground.

The Lands of *Ceſtuy que Truſt* are liable to Executions.

E **The** Lands of *Ceſtuy que Truſt* ſhall be liable to Executions, in the ſame Manner as if he himſelf had been ſeiſed, freed from all Incumbrances made by the Truſtee; and if the *Ceſtuy que Truſt* dies, and leaves Lands in Fee to diſcend to his Heir, that ſhall be *Aſſets per diſcent*, in the ſame Manner as if it had come to him in Poſſeſſion, and liable to Bonds, *&c.*

How Lands are to paſs in Poſſeſſion by Eſtate executed.

F **Where** Lands are to paſs in Poſſeſſion by Eſtate executed; two Things are requiſite, one the Grant of the Land, the other the Livery thereupon; for by the bare Grant without Livery, it doth not paſs by the Way of making an Eſtate. *Poph.* 49.

There muſt be a Donor and a Donee in Uſes.

G **This** is a Rule to be obſerved in Uſes, There muſt be a Donor and a Donee to take at the Time that is limited: Alſo if a Gift be made to *A.* and his firſt Son; if he hath no Son then, his after-born Son ſhall not take. *Cro. Eliz.* 334.

The Donee muſt be a Perſon *in eſſe*.

H **It** is againſt the Law, that one not *in eſſe* ſhould take but an Uſe limited in Poſſeſſion. *Ibid.*

A Limitation to Children *procreatis*, the Children then born, and not the *poſt nati* ſhall take.

I **The** Uſes of a Fine were to *B.* for Life, and after to the Children of *C. procreatis*: *C.* had at the making of the Deed two Sons, and afterwards two Daughters: Reſolved, That only the Sons who were *in eſſe*, and not the Daughters, ſhould take. *Cro. Eliz.* 334. *pl.* 1.

A Covenant to ſtand ſeiſed.

K **A Covenant** to ſtand ſeiſed always operate by Way of raiſing of an Uſe, and never to have an Action of Covenant upon.

How Uſes are governed and directed.

L **Uſes** limited by any Conveyance are governed and directed according to the Rules of the Common Law. 3 *Leon. Caſe* 49.

A **A Fine** *ſur Grant & Render*, cannot be (without a Writing) averred to be to any other Uſes than are mentioned in the Fine. 2 *Rep.* 75. *b.* 76. *a.*

What Uſes may be averred upon a Fine *ſur Grant & Render.*

B **All** the Uſes that the Covenantor parts not with, remain to himſelf. 2 *Lev.* 76.

All the Uſes the Covenantor parts not with, remain in him.

C **An** Uſe is conſtrued as favourably as may be, to comply with the Intention of the Party. 1 *Mod.* 98.

An Uſe is conſtrued favourably.

D **Intention** is the Foundation of Uſes, but ought to have theſe following Qualifications. *Lutw.* 700.

Intention is the Foundation of Uſes.

E 1*ſt*, **Manifeſt** out of the Words of the Deed.
2*dly*, **Agreeable** to the Rules of Law. *Lutw.* 790.
3*dly*, **Collected** and taken from the intire Deed. *Ibid.*
4*thly*, **To** be according to entry. 2 *Lev.* 18.

What are the Qualifications that they muſt have.

F **A Man** covenants in Conſideration of Marriage to make an Eſtate to certain Perſons to ſuch Uſes; no Uſe is raiſed by ſuch Covenant, unleſs the Eſtate be made accordingly. *Daliſ.* 112.

A Covenant to make an Eſtate; no Uſe is raiſed till the Eſtate made.

G **A Deviſe** may be to an Uſe, and may be ſo executed. *Lutw.* 823.

A Deviſe may be to an Uſe.

H **A Man** makes a Feoffment to the Uſe of himſelf for Life, and after his Death, that they in the Feoffment ſhall ſtand ſeiſed for the raiſing of one hundred Pounds; and after the raiſing of it, that then they ſhould make an Eſtate to his Wife, and the Heirs of her Body: Altho' no Eſtate was ever made by the Feoffees to the Wife, and the Heirs of her Body, yet the Uſe was raiſed preſently to them by the Words, That the Feoffees ſhould make an Eſtate to them, *&c.* *Daliſ.* 88. *pl.* 3.

Where an Agreement to make an Eſtate will raiſe an Uſe.

I **A Feoffment** is made without any Conſideration, and it is not ſaid to whoſe Uſe; it ſhall be to the Uſe of the Feoffor, if it doth not ſay to the Feoffee and his Heirs; to the only Uſe and Behoof of the Feoffee, his Heirs and Aſſigns for ever; and to and for no other Uſe, Intent or Purpoſe whatſoever. *Lutw.* 823. So of a Fine or Recovery without any Declaration of Uſes. See *Daliſ.* 112. *Downham's* Caſe, 9 *Rep.* 11. *b.* *Vaugh.* 43.

A Feoffment without Conſideration, and ſays not to whoſe Uſe, it ſhall be to the Uſe of the Feoffor.

How it ſhould be.

K **A Bargain** and Sale for Money by Deed inrolled to one in Fee, *Habendum* to the Bargainor in Fee, to the Uſe of the Bargainor for Life, Tail, or in Fee, or to the Uſe of another; this Limitation of the Uſes is void, and it ſhall be to the Uſe of the Bargainor in Fee: Becauſe the Conſideration and Sale implies the Uſe to be in him only. *Ben. Rep.* 61, 62. and it can be to no other. 1 *Leon.* 148.

A Bargain and Sale by Deed inrolled, cannot be to the Uſe of any but the Bargainor.

A Father cannot covenant that his Son ſhall ſtand ſeiſed.

A **A Father** (who hath the Inheritance) cannot covenant that his Son ſhall ſtand ſeiſed, but only that he himſelf who hath the Inheritance ſhall ſtand ſeiſed. 3 *Lev.* 306.

Where a Bargain and Sale, Recovery and Fine, make but one Conveyance.

B **A Bargain** and Sale, Recovery and Fine, altho' made and ſuffered at ſeveral Times, yet being by the Agreement of all Parties, make but one Aſſurance. 2 *Rep.* 55. *a.*

Indentures may direct the Uſes of a ſubſequent Recovery.

C **Indentures** may direct the Uſes of a ſubſequent Recovery. 2 *Rep.* 71. *b.*

What are ſufficient Conſiderations to raiſe Uſes upon Covenants to ſtand ſeiſed.

D **The** Affection of the Covenantor that his Lands ſhould remain in his Name and Blood, and the Fraternal Love that he bears to his Brothers, and for the Proviſion of his Heirs Males of his Body, are ſufficient Cauſes to raiſe the Uſes in the Land. 1 *Plow.* 309.

Wife, Son, Couſin, are ſufficient Conſiderations.

E **If** a Man covenants to ſtand ſeiſed to the Uſe of his Wife, Son or Couſin, this will raiſe an Uſe without expreſs Words of Conſideration; becauſe a ſufficient Conſideration appears. 7 *Rep.* 40. *b.* 11 *Rep.* 23. *b.* 25. *a.*

The Difference where an Uſe is to ariſe by Eſtate executed, as by Feoffment, *&c.* and where by Covenant to ſtand ſeiſed.

F **A Man** in Conſideration of a Marriage to be had, and of Money received, covenants to execute an Eſtate in the Manor of, *&c.* to the Man and Woman in Tail, the Eſtate is executed by Feoffment, Fine and Recovery, the Marriage never took Effect: But yet adjudged, That the Uſe ariſes, it being declared by Eſtate executed, which needs no Conſideration; but if it had been by Covenant to ſtand ſeiſed, it would not have been *ſans* Marriage.

A Fine levied to the Uſe of one not in *Eſſe*, yet held good.

G **A Man** levies a Fine to the Uſe of himſelf, and of ſuch a Wife as he ſhall marry, he marries and dies: And the Queſtion was, Whether this Limitation of Uſe were void, for want of Eſſence at the Time of the Limitation: But adjudged, That it was not, by all the Juſtices but *Dyer. Moore*, Caſe 240.

Covenant in Conſideration of One-hundred Pounds, to ſtand ſeiſed to the Uſe of a Son.

H **A Man** covenants with his Son in Conſideration of One hundred Pounds, to ſtand ſeiſed to the Uſe of his Son and his Heirs, nothing paſſes, unleſs the Deed be inrolled. 11 *Rep.* 25. *a.* See *Poſtea* in this Title.

How Uſes muſt be ſeiſed.

I **An** Uſe cannot be raiſed upon a Covenant, or by Proviſo, or by Bargain and Sale upon a General Conſideration; for if a Man by Deed inrolled, bargains and ſells for divers good Conſiderations, it is void; for it appears not that the Bargainor had *quid pro quo.* 1 *Rep.* 176. *a.*

The King cannot ſtand ſeiſed to an Uſe, neither can a Corporation.

K **The** King cannot be ſeiſed to an Uſe. *Cro. Jac.* 50. *pl.* 22. Neither can a Corporation.

A **A Covenant** upon a Marriage to levy a Fine to Uſes, and no Fine was levied, no Uſe ſhall ariſe. 3 *Lev.* 306, 307.

A Covenant upon a Marriage to levy a Fine to Uſes; no Fine levied, no Uſes ſhall ariſe.

B **Upon** a Marriage Agreement there was a Covenant to ſtand ſeiſed to the Uſe of himſelf in Fee until Marriage; and after Marriage then to himſelf and Wife, and the Heirs of their Bodies, *&c.* But before Marriage he makes a Leaſe for Years: And whether this Leaſe ſhould bar or deſtroy the Contingent Uſe was the Queſtion. *Poph.* The Statute executes only Uſes in *Eſſe*, not Contingent Uſes, till they happen in *Eſſe*; then this Uſe was merely void till Marriage, for there was not any new Eſtate in him: And held, That the Leaſe was good. *Cro. Eliz.* 764. *pl.* 3. and 854. *pl.* 17.

After the executing of a Marriage-Settlement, and before Marriage, a Leaſe for Years is made, this ſhall bind the Wife.

C **Covenants** between Mother and Son for compoſing of Differences; and at the End of the Deed he covenants, That if he dies without Iſſue, he doth give and grant to his Mother and her Heirs. The Uſe is well raiſed by this Covenant, it being the Intent of the Parties. 2 *Lev.* 225, to 227.

Where a Uſe is well raiſed by the Intent of the Parties.

D **To** the Uſe of himſelf for Life, and afterwards to the Uſe of his Wife, until a Son, or one of the Body of his Wife ſhall attain to twenty-one Years, the Baron dies without Iſſue: Adjudg'd, That the Wife ſhould have it for her Life. *Moore*, Caſe 56.

To the Uſe of his Wife until a Son to be born, ſhould come to Twenty-one, they have no Son, ſhe ſhall have it for her Life.

E **An** Agreement to convey to a Son will not raiſe an Uſe. 1 *Lev.* 55.

An Agreement to convey to a Son, will not raiſe an Uſe.

F **Conſideration** of natural Affection, and twenty Pounds, will raiſe an Uſe to a Son; but Conſideration of twenty Pounds only to a Son, will not raiſe an Uſe without Inrolment. 1 *Lev.* 56.

Conſideration of natural Affection, and twenty Pounds, will raiſe an Uſe to a Son; but a Conſideration of twenty Pounds only will not, without Inrollment.

G **A Bargain** and Sale without Money, ſhall operate as a Covenant to ſtand ſeiſed. *Note*, It was in Conſideration of natural Affection. 2 *Lev.* 10.

A Bargain and Sale without Money, ſhall operate as a Covenant to ſtand ſeiſed.

H **A Covenant** to ſtand ſeiſed, with Power to make Leaſes; he makes a Leaſe rendering Rent, and dies, he in Remainder for Life brings Debt for the Rent, and it doth not lie: Becauſe the Power being general to make Leaſes, and not ſaying upon any particular Conſideration, nor to any particular Perſon, no Uſe can ariſe out of the Covenant to ſtand ſeiſed, as in Caſe of a Feoffment or Fine, and therefore the Leaſe is void. 1 *Lev.* 30. See *Mildmay's* Caſe, 1 *Coke.*

He who hath a Power to make Leaſes in a Covenant to ſtand ſeiſed makes a Leaſe, it is void.

The Reaſon why.

There may be a future ſpringing Uſe, without a precedent Eſtate to ſupport it.

A **There** may be a future ſpringing Uſe, without a precedent Eſtate to ſupport it: As a Man covenants after his Death to ſtand ſeiſed to the Uſe of *J. S.* his Kinſman, and his Heirs; there being no Tranſmutation of Poſſeſſion, the Eſtate remains in him in the mean Time. 2 *Lev.* 77.

May riſe upon the not Performance of a Condition.

B **A future** Uſe may well riſe upon the Non-performance of a Condition.

The Difference between a Tranſmutation of the Eſtate, and a Covenant to ſtand ſeiſed.

C **Feoffment** to the Uſe of *A.* for Life, Remainder to *B.* for Life, *A.* refuſes, *B.* ſhall take preſently; Becauſe here is a Tranſmutation of the Eſtate upon the Livery. But if it had been by Way of Covenant to ſtand ſeiſed for Life, *B.* could not take till after the Death of *A.* but it ſhould remain in the Covenantor; becauſe he had not parted with the Poſſeſſion, and therefore ſhall have the Uſe during the Life of *A.* 2 *Lev.* 77. See the Rector of *Chidington*'s Caſe, 1 *Coke.*

In what Caſes are Parol Averments of Uſes, and what not.

D **In** what Caſes there may be Parol Averment of Uſes, and in what not. See 2 *Rep.* 77. *b.*

Baron and Feme levy a Fine of the Feme's Land, and the Baron only declares the Uſes, it ſhall bind the Feme if her Diſſent doth not appear.

E **Baron** and Feme levy a Fine of the Feme's Land, and the Baron ſolely declares the Uſes; this Declaration ſhall bind the Feme, if her Diſſent doth not appear: Becauſe when ſhe joined with her Huſband in the Fine, it ſhall be intended, if the Contrary doth not appear, that ſhe joined with him alſo in the Agreement in the Declaration of the Uſes of the Fine.

Where they levy a Fine of the Wife's Lands, and one declares the Uſes by one Deed, and the other by another, or neither of them declares the Uſes, it ſhall be to the Uſe of the Wife only.

F **But** when Baron and Feme levy a Fine of the Wife's Lands, and the Baron declares the Uſes by one Deed, and the Wife by another, or elſe that neither of them declare any Uſes (which are ſufficient in Law) there the Law doth immediately reveſt the Uſe in the Feme ſolely. 2 *Rep.* 57, 58.

The Eſtate ſhall paſs, and the Uſe ſhall ariſe according to the Intention of the Parties.

Where by Tranſmutation of Eſtate no Uſe ſhall ariſe.

Nor upon a doubtful Conveyance.

G **If** the Meaning of the Party doth appear, that he intended to paſs his Eſtate by way of Raiſing of an Uſe, there the Words, *Give*, *Grant*, *&c.* ſhall inure as a Covenant to ſtand ſeiſed: But where it doth not appear, that he intended to paſs it by way of Uſe, but by Conveyance at the Common Law by way of Tranſmutation of Eſtate, there no Uſe is raiſed. Alſo where a Man takes a doubtful Conveyance, it ſhall be intended a Conveyance at the Common Law. *March* 50, 51. *pl.* 78.

To the Uſe of ſuch Perſon, and for ſuch Eſtate as he ſhould appoint by his Will. It veſts in the Feoffor.

H **A Feoffment** to the Uſe of ſuch Perſon and Perſons, and for ſuch Eſtate and Eſtates, as he ſhould appoint by his Will. The Uſe veſts in the Feoffor, and he is ſeiſed of a qualified Fee, until he hath made the Declaration of the Uſes. 6 *Rep.* 17, 18.

A **When** a Man makes a Feoffment to the Uſe of his Will, he hath the Uſe in the mean Time. *6 Rep.* 17. *b.* 18.

A Feoffment to the Uſe of his Will, he hath the Uſe in the mean Time.

B **If** the Feoffor by Will limits the Eſtate according to his Power, the Eſtate takes Effect by the Feoffment, and the Uſe is directed by the Will. 8 *Rep.* 18.

Where the Eſtate takes Effect by the Feoffment, and the Uſe by the Will.

C **A Man** makes a Feoffment to the Uſe of himſelf, And *A.* his Wife, that ſhould be after Marriage, and the Heirs of their Bodies: He marries *A.* and whether ſhe ſhould take by the Limitation of this Uſe, was the Queſtion: And objected, That Uſes *in futuro* would not ariſe out of ſuch future Acts; for if it ſhould be ſo, an Uſe would ariſe out of an Uſe. But the Court held, That by the Marriage the new Uſe will ariſe and veſt, if there hath not been any Act in the mean Time to deſtroy it. *Cro. Eliz.* 439. *pl.* 54.

A Limitation to a Wife, that ſhall be held a good Uſe.

D **A Man** cannot at the Common Law give his Wife an Eſtate by Deed, but he may covenant to ſtand ſeiſed to her Uſe, and an Uſe will well riſe to her: Alſo he may give her an Eſtate by his Will.

A Man cannot at the Common Law give an Eſtate to his Wife; but by a Covenant to ſtand ſeiſed, he may.

E *A.* ſeiſed in Fee, levied a Fine to the Uſe of himſelf, and ſuch Wife as he ſhould marry, for their Lives, Remainder in Tail. It was argued, That the Wife here took nothing by this Limitation, becauſe ſhe was not capable at the Time of the Limitation: But if it had been to himſelf until he took a Wife, and then to the Uſe of himſelf and Wife, it had been good. 2 *Leon.* Caſe 283.

How it is where an Uſe is limited to one not *in eſſe*.

F **By** the Statute of *Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3. it is enacted, That all Declarations or Creations of Truſts or Confidences of any Lands, *&c.* ſhall be manifeſted and proved by ſome Writing, ſigned by the Party who is by Law enabled to declare ſuch Truſt, or by his Will in Writing, otherwiſe to be void. See an Explanation and Alteration of this Statute by the 4 *&* 5 *Annæ*, in the firſt Paragraph.

All Declarations or Creations of Truſts for Lands, ſhall be in Writing.

29 Car. 2. cap. 3.

4 & 5 Ann.

G **There** is alſo this Proviſo, That where any Conveyance ſhall be made of any Lands, *&c.* by which a Truſt muſt ariſe by Implication or Conſtruction of Law, or to be transferred or extinguiſhed by Act or Operation of Law: Then ſuch Truſt ſhall be of the like Force, as it ſhould have been, if this Act, *viz.* the Act of *Frauds, &c.* 29 *Car.* 2. *cap.* 3. had not been made.

Where a Truſt ariſes by Implication or Conſtruction of Law, how it is to be.

29 Car. 2. cap. 3.

H **How** to plead a Grant of a Reverſion by the Statute of *Uſes*. *Lutw.* 273.

How to plead a Grant of a Reverſion, by the Statute of *Uſes*.

I **An** Uſe will not, upon a Covenant to ſtand ſeiſed, ariſe to make good a Leaſe agreed in ſuch Deed to be made, unleſs it be to ſome of the Blood to be named in the Proviſo. 1 *Rep.* 175. *Mildmay*'s Caſe.

In what Caſe an Uſe upon a Covenant to ſtand ſeiſed will make good a Leaſe.

What a Contingency is.

Where it is uncertain whether an Uſe or Eſtate limited *in futuro*, will ever veſt in Eſtate or Intereſt, or no; there the Uſe or Eſtate is ſaid to be in Contingency: Becauſe upon a future Contingent, this may either veſt, or not veſt, as the Contingency happens. 10 *Rep.* 85. *a.* A

Uſes and Powers in Contingency may be revok'd.

Where Uſes are in Contingency and Poſſibility, they may, by mutual Aſſent of the Parties, be revok'd and determin'd; for as they may be raiſed by Indenture, ſo by a Proviſo or Limitation annex'd to them in the Indenture, they may be deſtroyed either before or after their Eſſence. 10 *Rep.* 87. *a.* B

Six Things to be obſerved in the Revocation of Uſes.

These ſix Things are to be obſerved in the Revocation of Uſes; C

1. **That** the Party revoking is ſeiſed again in Fee, without Entry or Claim. D

2. **That** he may revoke Part at one Time, and Part at another Time.

3. **That** if he make a Feoffment in Fee, or levy a Fine, *&c.* of any Part, this extinguiſheth the Power *pro tanto*; but if of the Whole, all the Power is extinct.

4. **That** if he that hath ſuch Power, hath no preſent Intereſt in the Land, nor ſhall have any Thing by the *Ceaſer* of the Eſtate, then this Feoffment or Fine of the Land is no Extinguiſhment of his Power; becauſe it is meerly collateral to the Land.

5. **That** by the ſame Conveyance by which the old Uſes are revoked, new may be created where the former ceaſe *ipſo facto*, without Entry or Claim.

6. **That** theſe Revocations are favourably interpreted, becauſe Mens Inheritances depend thereon. *Co. Lit.* 237. *a.*

An Uſe cannot be raiſed out of a Power, or an Uſe.

An Uſe cannot be raiſed out of a Power, or out of an Uſe. 1 *Leon.* 148. E

Where an Eſtate after purchaſed, ſhall go according to the Covenant before the Purchaſe.

If one covenants that he will purchaſe Lands before *Michaelmas*, and will levy a Fine before *Eaſter*, which ſhall be to ſuch Uſes; and he levies a Fine, but doth not limit any Uſes, it ſhall be according to the Covenant before the Purchaſe. *Cro. Eliz.* 401. *pl.* 10. F

Conſtruction of the Statute.

A Uſe which at Common Law was only a Truſt, came in the Place of an Eſtate. *Carthew* 140. G

The like.

A Conveyance by way of Uſe ſhall be conſtrued according to the Intention of the Parties. *Ibid.* 343. H

Revocation.

Power of Revocation of Uſes how to be executed. *Comberb.* 11. I

A **A Grant** to the Son, in Conſideration of natural Affection, and alſo for Money, enures as a Covenant to ſtand ſeized, *&c.* *Comberb.* 190.

Covenant to ſtand ſeiſed.

B **One** in Conſideration of natural Affection gives, grants and confirms to his Niece *S.* to the Uſe of himſelf for Life, Remainder to *S.* in Tail; this is Covenant to ſtand ſeiſed. *Ibid.* 128, 129.

The like.

C *A.* conveys to the Uſe of his Wife for Life, Remainder to the Uſe of *B.* and *C.* and their Heirs during the Life of *A.* and then to the Uſe of the Heirs Male of his Body, Remainder to the Heirs of his Body; here Heirs of his Body are Words of Purchaſe. *Ibid.* 212, 213.

Heirs of his Body Words of Purchaſe.

D **When** a Uſe is limited to Feoffees and their Heirs, be this executed, or not, it cannot be any Uſe or Truſt further (than) to be executed by the Statute. *Ibid.* 312, *&c.*

How far an Uſe ſhall extend.

E **A Uſe** to the Huſband for Life, Remainder to the Wife for Life, Remainder to all the Iſſues Female of their Bodies, and they have Iſſue a Daughter, the Remainder is attach'd, but ſhall be diveſted by the Birth of another Daughter afterwards. *Ibid.* 467.

A Uſe, tho' attach'd, where diveſted.

F **Where** a Deed by a Huſband and Wife is a good Declaration of the Uſes of a Fine. *Ibid.* 429.

Declaration of Uſes.

G **If** a Fine levied at another Time, or by other Parties, than the Deed of Uſes appoints, it ſeems it ſhall not be to the ſame Uſes ſince the Statute of Frauds. *Ibid.*

The Statute of Frauds.

H **Where** Eſtates are conveyed by Way of Uſe. 3 *Salk.* 292, 384. *Skin.* 292, 384.

I **Of** Conſiderations to raiſe an Uſe. 3 *Salk.* 385. *Skin.* 385.

K **Of** Deviſes and Settlements to Uſes. See *Mod. Caſes in Law and Equity* 4, 162.

L **Of** declaring Uſes on a Fine or Common Recovery. *Ibid.* 176, 177, *&c.*

Uſurpation.

Uſurpation.

See **Quare Impedit.**

Uſurpation, what.

Uſurpation is where, upon an Avoidance, a wrongful Patron preſents a Clerk to a Church, who is inſtituted and induced thereunto, and continues the quiet Poſſeſſion thereof, which turns the wrongful Patron's Eſtate to a Right. A

The rightful Patron may preſent or bring his *Quare Impedit*, notwithſtanding a Uſurpation.

7 Ann.

By the Statute of *7 Annæ*, to prevent this Miſchief, it is enacted, That no Uſurpation upon any Avoidance in any Church, Vicarage, or other Eccleſiaſtical Promotion, ſhall diſplace the Eſtate or Intereſt of any Perſon intituled to the Advowſon or Patronage thereof, or turn it to a Right: But that ſuch Perſon that would have had a Right, if no Uſurpation had been, may preſent or maintain his *Quare Impedit* upon the next, or any other Avoidance, (if diſturbed) notwithſtanding ſuch Uſurpation. B

Letters Patents *ad Corroberandum.*

Where an Uſurpation is on the King's Title, the Incumbent muſt get Letters Patents *ad Corroberandum. Skin.* 389. C

Uſury.

See **Contract.**

Uſury, what.

Uſury is a Gain of any Thing above the Principal, or that which was lent, and is taken only in Conſideration of the Loan, whether it be of Money, or any other Thing. D

3 No

A **No** Uſury without a Loan. 1 *Lutw.* 273.

No Uſury without a Loan.

B **What** Bond ſhall be uſurious. 1 *Lut.* 464, 466, 467. But no Advantage if the Statute is not pleaded.

What ſhall be an Uſurious Bond.

C **Note,** The Statute is not pleadable to a Bill of Bottomree. 1 *Lev.* 54. See 2 *Lev.* 7.

The Statute not pleadable to a Bill of Bottomree.

D **If** the Party who lends the Money contracts for more than for ſix Pounds *per Cent.* all the Aſſurance is void; but if he doth not contract for more than the Statute allows, and after he will take more; the Aſſurance ſhall not be avoided, but the Party ſhall forfeit the treble Value. *Raym.* 197. As if a Man when Money was at eight Pounds *per Cent.* lends Money, and takes Bond for the ſame, and then the Statute 12 *Car.* 2. is made, and he will continue the old Intereſt upon that Bond, the Bond ſhall not be avoided by ſuch Acceptance of Intereſt, but the Party ſhall forfeit the treble Value of the Bond. *Raym.* 197.

Where the Aſſurance is void, and where not; but the Party ſhall forfeit treble the Value of the Bond.

E **On** an Information upon the Statute of *Uſury*, he who borrows the Money may be a Witneſs, after he has paid it, but not before. *Ibid.* 191.

Where he who borrows the Money may be a Witneſs.

F **Threeſcore** Pounds were reſerved payable upon a Mortgage of Lands for three Years, payable at every ſix Months by equal Portions; whereas the whole Uſe-Money for three Years, for the Monies lent upon the Mortgage according to the Statute, came but in the whole to ſixty Pounds, and yet this adjudged to be no uſurious Contract. *Mich.* 23 *Car. B. R.* For ſuch Contracts are not within the Letter of the Statutes made againſt *Uſury*, and they are not to be extended to Equity.

Contracts not within the Letter of the Statutes, are not to be extended to Equity.

G **Where** there is not an uſurious Contract preceding although he that lendeth Money takes more than ſix Pounds *per Cent. per Annum*, upon a juſt computing of the Money received by him, whether it falls out by the miſcaſting of the Parties, or by the Miſtake of the Scrivener: This is not Uſury forbidden, and puniſhable by the Statute of 12 *Car.* 2. *cap.* 13. For the Statute was only made to prevent uſurious Contracts which are binding in Law, and looked not at voluntary Acts and Miſtakes. See the Statute.

Where there is not a uſurious Contract preceeded, it is not within the Statute of Uſury.

12 Car. 2. cap. 13.

H **It** is not ſufficient to plead the Statute of *Uſury*, and ſay, That for the lending of twenty Pounds, he took more than ſix Pounds *per Cent.* But he muſt ſet forth a corrupt Agreement as the Statute requires. *Trin. B. R.*

The Defendant muſt in Pleading ſet forth a corrupt Agreement as the Statute requires.

I **If** the Word *Corruptive* be not in the Declaration, it is naught. *Cro. Jac.* 104. *pl.* 40.

The Word *Corruptive* muſt be in the Declaration.

Where

What is not Uſury.

A **Where** a Man lends one hundred Pounds for a Year, and the Party agrees to give ſix Pounds for it, to be paid half-yearly, this is not Uſury; for he takes no more than the Intereſt for half a Year comes to at the half Year's End, and is not bound to ſtay till the Year is ended. *Cro. Jac.* 26. *Cro. Car.* 283. *pl.* 26.

A Bargain to pay during two Lives, and not to have the Princiyal, is not Uſury.

B **An** Agreement and Bargain to pay twenty Pounds *per Ann.* during two Lives, and not to have Principal Money, was not Uſury. *Cro. Car.* 353.

How to plead to an Action upon the Statute of *Uſury*.

C **The** Defendant pleads the Statute of *Uſury*; the Plaintiff replies, That it was *pro vero & juſto Debito, Abſque hoc quod corrupte Agreatum fuit contra Formam Statuti.* The Defendant demurred, and the Traverſe was adjudged to be naught: Becauſe it ought to be *Abſque hoc quod corrupte Agreatum fuit* only, without the Words *contra formam Statuti*: For thoſe Words ſubmit the Law, and the Conſtruction of the Statute, to the Lay-Gents.

The Statute cannot be pleaded to a *Scire Facias* upon a Judgment.

D **The** Statute of *Uſury* cannot be pleaded to a *Scire Facias* upon a Judgment. *Cro. Eliz.* 588. *pl.* 23.

The Statute ought to be pleaded, and why.

E **The** Statute of Uſury ought to be pleaded: For although it is *Prima facie* Uſury upon View of the Condition of the Bond; yet perhaps the Plaintiff might have rectify'd it by his Replication. *Lutw.* 466, to 470.

Where the Jury finds the *Aſſumpſit*, it ſhall not be intended that the Contract was uſurious.

F **Where** a Jury finds the *Aſſumpſit*, it ſhall not be intended that the Contract was uſurious. *Lutw.* 273, 274.

What Bargain is Uſurious, and what not.

G **A plain** Bargain and Purchaſe conditional, is no Uſury. 5 *Rep.* 69. *b.*

What is Uſury.

H **Condition** to pay Uſury, if the Son ſhall be living, and if he die before the Time, then ſo much which is leſs than the Principal and Intereſt, but I ſuppoſe not leſs than the Principal; this is Uſury. 5 *Rep.* 70. *a.*

Where more than ſix Pounds is no Uſury for the Incertainty.

I **If** the Principal and Intereſt be in Hazard upon a Contingency, it is no Uſury, though the Intereſt doth exceed ſix Pounds *per Cent.* And when there is an Hazard that the Plaintiff may have leſs than his Principal, it is no Uſury. *Show. Rep.* 8.

Where the Caſualty goes to the Intereſt only, it is Uſury.

K **If** one hundred Pounds be lent to have One hundred and twenty Pounds at the Year's End, upon a Caſualty; if the Caſualty goes to the Intereſt only, and not to the Principal, it is Uſury: For the Party is ſure to have the Principal again come what will come. *Cro. Jac.* 508.

A **But** if the Intereſt and Principal are both in Hazard, it is not then Uſury. *Cro. Jac.* 509.

But where both Principal and Intereſt are in Hazard it is no Uſury.

B **If** I ſecure both Intereſt and Principal, if it be at the Will of the Party who is to pay, it is no Uſury. *Ibid.*

Where both Principal and Intereſt are, at the Will of the Party, it is no Uſury.

C **If** I lend one a hundred Pounds for two Years, to pay for the Loan thereof thirty Pounds, and if he pays the Principal at the Year's End, he ſhall pay nothing for Intereſt, this is not Uſury: For the Party may pay it at the firſt Year's End, and ſo diſcharge himſelf. *Cro. Jac.* 509. 5 *Rep.* 69. *b.*

If one hundred Pounds be lent for two Years to pay thirty Pounds for the Loan, and if he pays the Principal at the Year's End, he ſhall pay no Intereſt, this is not Uſury.

D **Uſury** cannot be only for Money lent or borrowed, and therefore Bottomree Bonds are not uſurious. *Comber.* 133.

What cannot be Uſury.

E **A Contract** to pay the Principal Money, and a Sum for Forbearance beyond the common Intereſt for three Months, if *J. S.* ſo long lives; but if *J. S.* dies within three Months, the whole to be loſt, *&c.* *Quære*, If this be an uſurious Contract. *Ibid.* 92, 125.

The like.

F **Where** the Conſideration is neither uſurious or extorſive. *Ibid.* 252.

Conſideration.

G **The** Plaintiff was Co-Obligor with *J. S.* to the Defendant, and between *J. S.* and the Defendant there was an uſurious Contract; the Plaintiff paid part of the Money to the Obligee, and after pleaded the Statute of Uſury upon this Bond, and it is adjudged an uſurious Bond; upon which he brought an *Indebitatus Aſſumpſit* for the Money paid before the Bond was proved uſurious: And adjudged that the Action did not lie, but that it is like to the Caſe of Bribes, he who receives them ought to be puniſhed; but he who gives them ought not to be encouraged by any Way to recover his Money again. *Skinner* 411.

Of *Particeps criminis*, ſo as not to have the Money again.

Wager of Law.

H **Wager of Law is where an Action of Debt is brought againſt one, upon ſome ſimple Contract between the Parties without Deed or Record; then the Defendant may wage his Law by ſwearing in Court, in the Preſence of his Compurgators, That he oweth the Plaintiff nothing**

Wager of Law, what.

nothing in Manner and Form as he hath declared. And the Reaſon of Waging his Law is, becauſe the Defendant may pay to the Plaintiff his Debt in private, or before Witneſſes, which may all die, and therefore the Law allows him to wage his Law in his Diſcharge. Coke 2 Inſt. 45. And his Oath ſhall rather be accepted to diſcharge himſelf, than the Law will ſuffer him to be charged upon the bare Allegation of the Plaintiff.

The Manner of waging of Law.

The Manner of waging of Law is this, He that is to do it muſt do it *duodena manu, viz.* He muſt bring ſix Compurgators with him (who are to ſwear that they believe that he ſwears true) and ſtand at the End of the Bar towards the Right Hand of the Chief Juſtice, and the Secondary aſks him, Whether he will wage his Law? If he anſwers that he will, the Judges admoniſh him to be well adviſed, and tell him the Danger of taking a falſe Oath; and if notwithſtanding he perſiſt, then the Secondary ſpeaks Words to this Effect following unto him, and he that wageth his Law doth repeat every Sentence diſtinctly after him, *viz. Hear ye this ye Juſtices, that I* W. S. *do not owe to* B. B. *the Sum of,* (naming the Sum in the Declaration) *nor any Penny thereof, in Manner and Form as* B. B. *hath declared againſt me: So help me God.* And then he kiſſeth the Book. But before he takes the Oath, the Plaintiff is called by the Crier thrice, and if he do not appear he becomes Nonſuited, and then the Defendant goes quite without taking his Oath; but if he appear, and ſwears that he owes the Plaintiff nothing, and the Compurgators to give in their Verdict, That they believe he ſwears true, then the Plaintiff is barred for ever: *Mich.* 22 *Car. B. R.* If the Plaintiff do not appear to hear the Defendant perform his Law, he is Nonſuit, and then he is not barred, but may bring a new Action. *Paſch.* 24 *Car. B. R.* A

When Wager of Law was moſt in Practice.

This Wager of Law was moſt practiſed in thoſe Times that Craft, Subtilty, and Knavery had not got firm footing in this Nation; but it being abuſed by the Iniquity of the People, the Law was forc'd to find out another Way to do Juſtice to the Nation, and that was by turning of Actions of Debt into Actions upon the Caſe by Ways of *Indebitatus Aſſumpſit,* which hath now ouſted the Defendant of his *Ley Gager.* See *Slade's* Caſe in the Lord *Coke's* Reports. B

The Defendant cannot wage his Law in an Action ariſing upon a Realty, and why.

The Defendant cannot wage his Law in an Action which doth ariſe upon a Realty; for there the Agreement between the Parties cannot be ſo private, but there will be ſomething to prove it beſides the Suggeſtion of the Party; but only where the Action is perſonal, and the Cauſe private: *Trin.* 23 *Car. B. R.* And therefore if an Action be brought for the Arrearages of Rent, the Defendant cannot wage his Law, for the Rent doth ariſe out of the Land, and founds in the Realty, and it may appear the Defendant had the Land, and the Law will preſume he was to pay Rent for it. C

A **Wager** of Law lieth of a Debt recovered in a Court-Baron. *Raym.* 386. But this ſeems of a Debt originally ſued for there, and not in Debt for Coſts and Damages there recovered for Words. *Ibid.*

It lies of a Debt recovered in a Court-Baron.

B **The** Defendant cannot pray to be admitted to wage Law *Inſtanter* after Imparlance, but before he may, and then the Plaintiff cannot be Nonſuit, if the Defendant perfect his Law; but if he wage his Law after Imparlance, the Plaintiff may be Nonſuit. *Per Magiſtrum Liveſay & alios, &c. Paſch.* 21 *Car.* 2. *B. R.*

Defendant cannot pray to be admitted to wage his Law after Imparlance.

C **If** one bring an Action of Debt upon a *conceſſit ſolvere*, as it is uſed to be done in *Briſtol*, and ſome other Places, the Defendant may wage his Law. *Hill.* 1650. *B. S.* 5 *Febr.* For his Confeſſion is no Proof of the Debt at the Common Law, though by a ſpecial Cuſtom an Action may be brought upon ſuch a Promiſe.

In Debt on *conceſſit ſolvere*, Defendant may wage his Law.

D **If** the Defendant do tender his Law in Court, and is ready to perform it, and the Plaintiff being called, doth not appear, he ſhall be Nonſuit, and pay Coſts; but then he may bring another Action for the Debt, if he pleaſe; but if the Plaintiff do appear, and the Defendant do make his Law, then the Plaintiff ſhall never bring another Action for that Debt, but ſhall be barred for ever: *Mich.* 1650. *B. S.* 22 *Nov.* For it is as much as if a Verdict paſſed againſt him; for here is all done that the Law requires towards the diſcharging of the Defendant.

If Defendant tender his Law, and Plaintiff do not appear, he ſhall be Nonſuit. But if he appear, and Defendant make his Law, Plaintiff ſhall be barred for ever.

E **No** Action ſhall ever lie againſt an Executor or Adminiſtrator, where the Teſtator or Inteſtate might have waged their Law; becauſe they have loſt the Benefit of making that Defence, which is a good Defence in that Action; and if their Teſtator or Inteſtate had been living, might have taken the Advantage of it.

Action lies not againſt an Executor, whoſe Teſtator might have waged the War.

F **The** Party who makes his Law, ſhall be ſworn directly or abſolutely, and the Compurgators *de Credulitate*, viz. That they believe it to be true. *Co. Inſt.* 2. *fol.* 45.

How the Defendant, and how the Compurgators to be ſworn.

G **Wager** of Law lies not in an Action of Debt for Scavage in *London* by Cuſtom, confirmed by Act of Parliament. 2 *Lev.* 106.

It lies not in Debt for Scavage upon a By-Law in *London*.

H **Debt** was brought in the King's Bench upon a Breach of a By-Law in *London*. The Defendant pleaded *Nil debet per Legem*, and at the Day appeared at the Bar with his Compurgators to perfect his Law, and was aſked by the Court, Whether he paid the Money? All the Anſwer they could get from him was, That he owed the Plaintiff nothing. And thereupon Judgment was given, *quod Def. perfecit Legem*. But I think, that this would not have been adjudged a good Plea in this Caſe, if it had been demurred to.

Wager of Law to Debt upon a By-Law.

Where the Court would not ſuffer the Defendant to wage his Law.

A The Court upon hearing of the Caſe would not admit the Defendant to wage his Law, though he earneſtly deſired it. 2 *Leon. Caſe* 143.

Baron and Feme waged their Law.

B The Baron and Feme were allowed to wage their Law for the Debt of the Feme, and they both did ſwear according to the Form of the Oath. *Cro. Eliz.* 161.

Nonſuit in a Wager at Law.

C In an Action of Account Render, the Defendant waged his Law, and came to the Bar with his Compurgators ready to perfect his Law, and the Plaintiff being called did not appear, whereupon he became nonſuited. *Gunner*'s Caſe. *Mich.* 6 *Annæ*, *B. R.*

Where the Plaintiff may be Nonſuit, and where not.

D Where the Defendant wages his Law, and is ready to do it, the Plaintiff cannot be Nonſuit, becauſe it is of the ſame Term, but he ſhall be barred: But in another Term afterwards he may be nonſuited, if the Defendant taketh a Day over to wage his Law until another Term. 3 *Leon. Caſe* 55.

A Bailiff cannot wage his Law, but a Receiver may.

E A Bailiff cannot wage his Law, but a Receiver may. *Cro. Eliz.* 790. *pl.* 32.

Where Wager of Law does not lie.

F In Account againſt one as Bail *ad merchandizandum*, Wager of Law does not lie. *Mod. Caſes in Law and Equity* 303.

G But if Account be againſt one as Receiver, if the Plaintiff does not ſhew by whoſe Hands, it will not lie. *Ibid.*

The like.

H Lies not in Debt on a By-Law, nor in any Action where a Wrong is ſuppoſed. *Salk* 683.

The like.

I In Debt it lies only where the Contract is ſecret, and not where founded on any Thing notorious. *Ibid.*

The like.

K In an Account it lies where the Receipt was by the Defendant of the Plaintiff, but not where by or of a third Perſon. *Ibid.*

Where it does lie.

L In *Detinue* it lies whether the Receipt was of the Plaintiff or of a Stranger. *Salk.* 683.

The like.

M It lies not in Debt by a Gaoler for Meat and Drink. *Salk.* 654.

N See the Method of performing Wager of Law. *Ibid.* 682.

The like.

O In Debt on Arbitrament where the Submiſſion was by Parol, the Defendant may wage his Law. *Ibid.*

The like.

P So in Debt for an Amercement in Court Baron; but not on a Judgment in a Court Baron. *Ibid.* 684.

Wagers.

A BY an Act of Parliament to prevent the laying of Wagers relating to the Publick, made 7 *Annæ*, it is enacted, That all Wagers to be laid upon or of the preſent War, and all Policies of Aſſurance, and all Bonds and Writings for the Payment of any Money ſhall be void: And that all Perſons who ſhall be concerned as Brokers, Notaries, or other Agents, in making or procuring, or ſealing or ſigning ſuch Policies, ſhall for every ſuch Offence be committed, and forfeit double the Sum for which ſuch Wager ſhall be laid, or for which ſuch Policies, Bonds, *&c.* ſhall be given, one Moiety to the Queen, and the other to any Perſon who ſhall ſue for the ſame in any Court at *Weſtminſter*.

The Act to prevent the laying of Wagers relating to the Publick. 7 Annæ.

The Puniſhment of Brokers and publick Notaries.

B This ſhall not extend to any Aſſurance to be made upon Ship, Veſſel or Cargoe to be employed in any Voyage, or any Bottomree Bonds.

No to extend to Aſſurance upon Ships or Bottomree Bonds.

C An *Indebitatus Aſſumpſit* will not lie for Money won at Play. *Carthew* 338.

Wages.

D WAges is what is agreed upon by a Maſter to be paid to a Servant, or any other Perſon which he hires to do Buſineſs for him.

Wages, what.

E By the Statute of 4 & 5 *Annæ*, it is enacted, That all Suits in the Court of Admiralty for Seamens Wages which ſhall become due after the firſt Day of *Trinity* Term, 1706, ſhall be commenced and ſued within ſix Years next after the Cauſe of ſuch Action ſhall accrue, and not after.

When Suits for Seamens Wages ſhall be in the Admiralty Court. 4 & 5 Annæ.

There

Proviſo for Feme Coverts, in Priſon, Infants, or Perſons beyond the Seas, &c.

There is a Proviſo, That if any Perſon entitled to ſuch Action for Seamens Wages, be, or ſhall be, at the Time of any ſuch Cauſe of Suit or Action accrued, fallen or come, within the Age of twenty one Years, Feme Covert, *Non compos*, impriſoned, or beyond the Seas, then they ſhall have ſix Years after thoſe Diſabilities removed, or the Parties returning from beyond the Seas. A

So alſo where the Defendant is beyond Sea.

So likewiſe there is another Clauſe which ſays, That if any Perſon againſt whom there is or ſhall be any ſuch Cauſe of Suit or Action for Seamens Wages, or againſt whom there ſhall be any Cauſe of Action of Treſpaſs or Detinue, Action of Trover or Replevin, for taking of any Goods, Cattle, or of Action of Account or upon the Caſe, or of Debt grounded upon Lending or Contract without Specialty, of Debt for Arrears of Rent, or Aſſault, Menace, Battery, Wounding and Impriſonment, or any of them, be or ſhall be at the Time of any ſuch Cauſe of Suit or Action given or accrued, fallen or come, beyond the Seas; then ſuch Perſon or Perſons who is or ſhall be entituled to any ſuch Suit or Action, ſhall be at Liberty to bring the ſaid Actions againſt ſuch Perſon or Perſons after their Return from beyond the Seas, ſo as they take the ſame after their Return from beyond the Seas within ſuch Times as are reſpectively limited for the bringing of Actions before this Act, (which ſee in the Paragraph next before) and the ſaid other Act made in the 21ſt Year of the Reign of King *James* the firſt. B

The Juſtices have Power to make an Order for Wages, but not for Work done. *3 Salk.* 261. C

Where the Juſtices of Peace have no Juriſdiction of Labourers Wages. *Carth.* 156. D

Waif.

See { Felo de ſe.
Forfeiture.

Waif, what; and where the Owner loſes his Goods, and where not.

WAif is where a Felon in Purſuit waves the Goods, or for Fear of being apprehended, having them in his Cuſtody, and thinking that Purſuit was made, flies, and waves them. Then the King's Officer, or Bailiff to the Lord, who hath by Preſcription or Grant Bona Waviata, may ſeiſe them to the King or Lord's Uſe, who may keep them, except the Owner makes a freſh E

Purſuit, and convict the Felon, and there the Court will grant the Owner Reſtitution of his Goods. But if he had not the Goods with him when he fled, being purſued, they are not Waifs, nor forfeited; but the Owner may take them where he can find them. 5 Rep. 109. See the Statute of 21 H. 8. cap. 11.

A The Reaſon that the King ſhall have Goods waived is, becauſe there was a Default in the Party robbed, that he did not purſue the Felon, to have taken the Goods from him; and therefore the Law gives them to the King. *Cro. Eliz.* 694.

The Reaſon why the King ſhall have Goods waived.

B In Trover for a Horſe the Defendant juſtifies for *Bona Waviata* granted by Patent, but he did not ſet forth the Patent, nor that any Felony was committed, which was held to be naught. 1 *Keb.* 509. *pl.* 77.

How to juſtify for *Bona Waviata.*

C If a Felon leaves ſtolen Goods with an Intent to fetch them at another Time, thoſe are not waived; but if he be purſued, and he leaves them for fear of being apprehended, there they are waived. *Moore, Caſe* 785.

Where Goods are waived, and where not.

D *Bona Fugitivorum* are the proper Goods of him who flies for the Felony, and when the Flight is found by the Coroner, they are forfeited. 8 *Rep.* 110.

Bona Fugitivorum, what.

E Forfeiture of Felons Goods ought always to appear upon Record. 5 *Rep.* 110. *a.*

Bona Felonum.

F Waif and Stray may be claimed by Preſcription. 9 *Rep.* 28. *a.*

Waif and Stray by Preſcription.

G Owner of a Stray may ſeiſe it tendring Satiſfaction. *Salk.* 686.

Owner may ſeize.

H And in Pleading need not ſhew the Sum tendred. *Ibid.*

Pleading.

Wales.

I TRial for Murder in *Wales* in the next *Engliſh* County. 1 *Lev.* 118.

Trial for Murder in *Wales.*

K Where the Court of *Marches* may find Damages under 50 *l.* *Ibid.* 205.

Where the Court of *Marches* may find Damages under 50 *l.*

L A *Fi. Fa.* lies out of the King's Bench into *Wales.* *Id.* 291. So *Elegit* and *Certiorari.* *Raym.* 206. The like of *Cheſter.* *Id.* 256.

Fi. Fa. lies into *Wales*, &c. for the King.

Statutes of *Jeofails* extend into *Wales*, &c.

By the late Act, *For the Amendment of the Law*, the ſame Act, and all the Statutes of *Jeofails*, are to extend to the Courts of Record in the Counties Palatine of *Lancaſter*, *Cheſter* and *Durham*, and the Principality of *Wales*. A

Original out of Chancery runs not into *Wales*.

An original Writ out of the Chancery here doth not run into *Wales*, but a Writ of Execution doth. *Raym.* 206. B

Wales is Part of *England*, by the Statute of 27 **H.** 8. **cap.** 26.

By the Statute of 27 *H.* 8. *cap.* 26. *Wales* is made Part of the Realm of *England*. *Ibid.* See the late Act for the Union of *England* and *Scotland*. C

Sheriffs of *Wales* to have Deputies in the Courts of *Weſtminſter*. 1 **Ed.** 6. **cap.** 10.

By the Statute of *E.* 6. *cap.* 10. The Sheriffs of *Wales* ought to have their Deputies in the Courts of *Weſtminſter*. *Raym.* 206. D

How Proceſs to be directed into *Wales*. 34 & 35 **H.** 8. **cap.** 26.

And by the Statute of 34 & 35 *H.* 8. *cap.* 26. All Proceſs for weighty Cauſes ſhall be directed into *Wales* by the Chancellor and Council, which is intended the Judges. *Raym. Ibid.* E

Indictment.

Indictment of Murder removed out of *Wales*, and tried in an *Engliſh* County. *Mod. Caſes in Law and Equity* 135, 136, *&c.* F

Certiorari.

Yet ſee a *Certiorari* denied for removing Indictments of Murder out of *Wales*. *Ibid.* 146. G

Prohibiton.

Prohibition to the Grand Seſſions there for ſequeſtring Lands there on a Proceſs ſued in *London*. *Ibid.* 374. H

Writ of Error.

Record returned upon a Writ of Error only by one Juſtice of the Grand Seſſions. *Skinner* 10. I

Wardens of a Church, or Church-wardens.

See **By-Laws.**

Churchwardens, what.

Churchwardens are Gardiani Eccleſiæ, **and have the Cuſtody of the Keys of the Church; but they are not Spiritual Perſons, though their Office is Eccleſiaſtical.** K

A **One** Churchwarden cannot releaſe, neither can he give away the Goods of the Church; and where Coſts are adjudged to them, the one cannot diſcharge them without the other. *Cro. Jac.* 234. *pl.* 3.

One Churchwarden cannot diſcharge Coſts, nor give away the Goods of the Church without the other.

B **A Churchwarden** is an Officer whereof the Common Law takes Notice.

A Churchwarden is an Officer taken Notice of by the Common Law.

C **A** *Mandamus* lies to the Spiritual Court to ſwear a Churchwarden elected by the Pariſhioners according to Cuſtom. *Lutw.* 1013. *Cro. Jac.* 537. *pl.* 15. *Cro. Car.* 551. *pl.* 4.

A *Mandamus* lies to the Spiritual Court to ſwear a Churchwarden elected by Cuſtom.

D **Churchwardens** may join in an Action upon the Caſe for a falſe Return upon a *Mandamus*, becauſe the *Mandamus*, and all the Proſecution and Charge thereof was joint, and the Office was no Office of Profit. 3 *Lev.* 362.

They may join in an Action for a falſe Return.

E **Churchwardens** preſcribed to diſpoſe of Seats in the Church, becauſe they repair them; and held naught. 2 *Lev.* 241.

Churchwardens cannot preſcribe to diſpoſe of Seats in the Church, becauſe they repair them.

F **Churchwardens** juſtify the taking off of a Man's Hat in the Time of Divine Service; and held good. For although the Churchwardens may preſent this Offence in the Spiritual Court, yet they are not bound in the mean Time to permit this Irreverence and Indecency in the Church. 1 *Lev.* 196, 197.

May juſtify the taking off of a Man's Hat in Time of Divine Service.

G **The** Farmer of the Land, and not the Leſſor, ſhall be tax'd for the Repairs of the Church. 5 *Rep.* 67. *b.*

Who muſt pay for Repairs.

H **The** Churchwardens and greater Part of the Inhabitants, may upon a general Warning, aſſemble and make a Tax for the Repairs of the Church. *Id.*

Who may make a Tax for the Repairs of the Church.

I **If** a Man hath a Houſe in one Pariſh, and Land in another, which he uſes, he ſhall be tax'd for the Repairs of the Church where his Lands lie. 5 *Rep.* 67, 68.

Landholders ſhall pay for them.

K **Churchwardens** cannot preſcribe to have Lands to them and their Succeſſors, for they are not a Corporation to have Lands, but for Goods for the Church they are. *Danv. Abr.* 787. 1 *Roll. Abr.* 121.

No Corporation to have Lands, but Goods they may have.

L **As** in *London* Churchwardens are a Corporation, and may take Lands for the Benefit of the Church; ſo throughout *England* they are a Corporation, and capable to take and purchaſe Goods for the Benefit of the Church. *March* 68. *pl.* 104.

All Churchwardens in *England* are a Corporation *quoad* Goods.

M **But** in *London* the Parſon and Churchwardens are a Corporation, and may purchaſe and demiſe Lands. *Cro. Jac.* 532. *March* 66, or 67.

A Corporation in *London*.

Must act for the Benefit, not Disadvantage of the Church.

A Altho' Churchwardens have Power to receive Goods for the Benefit of the Church, yet they have no Power to do any Thing to its Disadvantage. *Yelv.* 173. 2 *Brownl.* 215.

Cannot give Goods without Consent of the Vestry.

B A Gift of Church-Goods in their Custody without the Consent of the Vestry, is void. *Roll. Rep.* 14 *Jac.* *Danv. Abr.* 787.

May dispose of a ruinous Bell, or Stones of the Church.

C **Churchwardens** by the Agreement of the Parishioners may order a ruinous Bell to be new cast, or dispose of the Stones belonging to the Church. 1 *Roll. Abr.* 121.

How to declare in Trespass *tempore Praedecessorum.*

D **Churchwardens** may bring Trespass for a Bell taken away out of the Church in the Time of their Predecessors; but they must lay it *ad dampnum Parochianorum*, and not *ad dampnum ipsorum. Cro. Eliz.* 145, 179.

How in their own Time.

E But if they bring an Action for the taking of the Goods in their own Time, they may lay it *ad dampnum Parochianorum*, or *ad dampnum ipsorum* at their Election. *Ibid.*

How to bring an Action of Account against their Predecessors.

F If Churchwardens bring an Action of Account against their Predecessors for a Bell, *&c.* it must not be laid *Bona Ecclesiae*, but *Bona Parochianorum.* 1 *Mod.* 65.

Warrant of Attorney.

See **Judgment.**

Warrant of Attorney, what.

G A **Warrant of Attorney is an Authority and Power given by a Client to his Attorney to appear and plead for him, or else to suffer Judgment to pass against him by confessing of the Action, by** Nil dicit, Non sum informatus, **or otherwise.**

Where a Warrant of Attorney shall be void for confessing of a Judgment, and yet good for an Appearance.

H **Although** a Warrant of Attorney is given by a Man in Custody to confess a Judgment, no Attorney being present, is void as to the Entry of a Judgment, yet it shall be a good Warrant to appear and file a Common Bail upon.

A **By** the Act *For the Amendment of the Law*, made 4 & 5 *Annæ*, it is enacted, That the Attorney for the Plaintiff or Demandant in any Action or Suit ſhall file his Warrant of Attorney with the proper Officer of the Court where the Cauſe is depending, the ſame Term he declares: And the Attorney for the Defendant or Tenant ſhall do the like the ſame Term he appears, under the Penalties inflicted upon Attorneys by any former Law for Default of filing their Warrants of Attorney.

The Attorneys on both Sides muſt file their Warrants of Attorney in all Cauſes with the proper Officer.
4 & 5 **Ann.**

B **An** Attorney for a Corporation muſt have a Warrant under the Corporation-Seal for that Purpoſe. 1 *Plow*. 91. *b*.

An Attorney for a Corporation muſt have a Warrant under their Seal.

C **Tho'** by the Statute the Plaintiff's Attorney is to file his Warrant the Term he declares; yet if he does it before the Defendant pleads, 'tis as well. *Mod. Caſes in Law and Equity* 77.

Of filing the Warrant of Attorney.

Warrant of Commitment.

D **Warrant** directed to a wrong Officer, not good. *Carthew* 78.

Wrong directed.

E **Churchwardens** committed by a Warrant for not accounting, there to remain till duly diſcharged according to Law, not good; for it ſhould be, there to remain till they account. *Ibid*. 152.

Warrant not good.

F **Warrant** to Commitment till concluded. *Ibid*. 291.

G **Where** a Warrant of Commitment muſt be returned *in hæc Verba*, where not. 3 *Salk*. 93.

Return.

H **Where** a good Warrant is illegally executed by an improper Officer, 'tis naught. *Ibid*. 149.

Warrant ill executed.

I **Where** the Legality of a Warrant ſhall not be put in Iſſue. *Ibid*. 354.

Iſſue.

Warranty.

See **Eſtoppel.**

Warranty, what.

A Warranty is a Covenant Real annexed to Lands, whereby a Man and his Heirs are bound to warrant the ſame, and either upon Voucher, or by Writ of Warrantia Chartæ, **to yield other Lands to the Value of thoſe that ſhall be evicted by an elder Title.** Co. Litt. 365. a. A

How far *dedi* is a Warranty.

Where there is in a Deed contained *dedi & conceſſi, &c.* to be holden of the chief Lord of the Fee, reſerving no Service, there the Feoffor ſhall be bound to Warranty during his Life becauſe of his own Gift, but his Heirs ſhall not: But if a Man gives Land in Tail by the Word *dedi*, he and his Heirs are bound to warrant; and ſo of a Leaſe for Life at a Rent. 2 *Inſt.* 276. B

What is a general Warranty, and why.

Where a Man for himſelf and his Heirs warrants to one and his Heirs. This is a general Warranty, becauſe it is not reſtrained to any Perſon certain. 1 *Rep.* 1. *a.* C

Where it ſhall not bind a Feme Covert.

A Warranty deſcending upon a Feme Covert during the Coverture, where her Entry is congeable ſhall not bind her. *Cro. Eliz.* 72. *pl.* 28. D

A collateral Warranty commencing by Diſſeiſin ſhall not bind the Heir in Tail.

Tenant for Life, Remainder in Tail to his Nephew and Heir, leaſes for Years with Agreement with the Leſſee; that he ſhall make a Feoffment of this Land, and then he will releaſe with Warranty, which is done accordingly: And adjudged, That this collateral Warranty commencing by Diſſeiſin ſhall not bind the Heir in Tail, upon whom it deſcended. *Cro. Car.* 483. *pl.* 7. 484. E

All Warranties by Tenant for Life ſhall be void.

4 & 5 **Ann.**

Alſo collateral Warranties by any Anceſtor not having any Eſtate of Inheritance in Poſſeſſion.

All Warranties to be made for any Tenant for Life of any Lands, *&c.* the ſame coming or deſcending to any Perſon in Reverſion or Remainder, ſhall be void; and likewiſe all collateral Warranties to be made of any Lands, *&c.* by any Anceſtor who has no Eſtate of Inheritance in Poſſeſſion therein, ſhall be void againſt his Heir. *Stat.* 4 & 5 *Annæ.* F

A **Where** the Entry is gone, and only a Right of Action left, there a Warranty deſcending upon the Heir at Law to the Warranty, ſhall bind: But it ſhall not bind where there is a Right of Entry.

Where a Warranty ſhall bind an Heir.

B **Covenant** lies more properly than a *Warrantia Chartæ*, where a Term for Years is evicted. 3 *Lev.* 321.

Covenant lies where a Term for Years is evicted.

C **A Special** Warranty ſhall not controul and expound a General Warranty; as the Words *dedi & conceſſi, &c. Cro. El.* 864. *pl.* 43. See 861. *pl.* 36. *Co. Litt.* 384. *a.*

A Special Warranty ſhall not controul and expound a General Warranty.

D **Warranty** diſcends upon the Demandant, and the Tenant prays Judgment, if againſt the Fine and Warranty of his Anceſtor; he ſhall maintain the Action. *Lutw.* 853.

Warranty diſcends upon the Demandant, and the Tenant prays Judgment, if againſt the Fine.

E **A Warranty** is entire, and extends to all the Lands, and is a Bar to every Perſon on whom it diſcends, of all the Right that he hath in the Land, and if every of them hath a Right jointly or ſeverally, every one is barr'd; and if one hath a Right, and the other nothing, he which hath the ſole Right ſhall be barr'd of the whole, becauſe all the entire Warranty diſcends upon the General Heir. 8 *Rep.* 54. *a.*

Warranty is entire, and a Bar to every Perſon on whom it diſcends.

F **A Man** makes a Feoffment in Fee with Warranty againſt him and his Heirs; the Feoffee ſhall not have a *Warrantia Chartæ* upon this Warranty againſt the Feoffor or his Heirs; for when the Warranty is only againſt him the Feoffor and his Heirs, if the Feoffee be impleaded by a Stranger, he ſhall never vouch by this Warranty. For the Nature of it is only to rebut againſt him, *viz.* the Feoffor and his Heirs, and not to take Recompence in Value. *Dal.* 48. *pl.* 8.

Where a *Warrantia Chartæ* lies and where not.

Rebutter.

Recompence.

G **An** Action doth not lie upon a bare Affirmation that the Thing ſold was worth ſo much, whereas in Truth it was not worth ſo much as he affirmed, becauſe it is every Shopkeeper's Caſe; but if he actually warrants it, then *econtra. Lekins* and *Clift. Paſch.* 15 *Car.* 2. *B.R. Telv.* 20. See *Cro. Jac.* 4. *pl.* 4.

Caſe lies not upon a bare Affirmation, but it doth upon an actual Warranty.

H **The** bare Affirmation without an actual Warranty will not maintain an Action. *Cro. Jac.* 4. *pl.* 4.

An Affirmation without a Warranty ſignifies nothing.

I **Where** a Man ſells a Thing, and afterwards at another Place warrants it, the Warranty is void; becauſe it was not made at the Time of the Bargain. 6 *H.* 7. 1. *b. pl.* 7.

Warranty muſt be at the Time of the Bargain, and not afterwards.

K **A Warranty** diſcending upon an Infant ſhall not bind him, in caſe his Entry be lawful into the Land to which it is united; but he muſt take care not to ſuffer a Diſcent of the Land after his full Age, before he hath made his Re-entry. *Poph.* 71. 1 *Rep.* 140. *a.* But he may enter at any Time after his full Age, unleſs there be a Diſcent.

Where a Warranty ſhall bind an Infant, and where not.

Ceſtui que Uſe.

Ceſtuy que Uſe may take Advantage of a Warranty A
annexed to the Eſtate. *Salk.* 685.

Ejectment.

The Plaintiff in Ejectment may make a Title by B
a collateral Warranty. *Ibid.* 686.

Does not extinguiſh a Right.

But tho' a Warranty binds or bars, it does not C
extinguiſh a Right. *Ibid.*

Adtunc & ibidem.

Whereas the Plaintiff had bargained and bought D
of the Defendant ſixteen Hogſheads of Wine, *&c.* that the Defendant *in conſideratione inde adtunc & ibidem* did warrant the Wine to be good, and Merchandizable, *adtunc & ibidem* ſhall be intended all at one Inſtant. *Skin.* 104.

Collateral Warranty.

Tenant for Ninety-nine Years, if he ſo long E
live, Remainder to Truſtees to preſerve contingent Remainders; Remainder to his firſt and other Sons in Tail; Remainder in Tail; Remainder to the Heirs Male of Tenant for Years, and to his Heirs Male Tenant for Years; Remainder to *Thomas*, Brother to the Tenant for Years, and to his Heirs Male Tenant for Years: Having no Iſſue, the Truſtees convey to him, and he levies a Fine, and after ſuffers a Recovery; the Remainder of *Thomas* is barred by the collateral Warranty deſcended upon him. *Ibid.* 106.

Waſte.

See { **Covenant.**
Eſtrepement.
Leaſe, &c.

Waſte, what.
Stat. Gloc. 6 E. 1. cap. 5.

Waſte is where Tenant for Years, Tenant for Life, Tenant for another's Life, Tenant in Dower, or Tenant by the Courteſy, commit Waſte by pulling down of the Houſe, or ſuffering of it to fall for want of Repairs, or cutting down of Timber, or digging of the Ground, &c. **then he in the Reverſion ſhall have his Writ for ſuch Waſte, and ſhall recover the Place waſted, and treble Damages.** Stat. de Gloc. 6 E. 1. cap. 5. F

A **If** a Leaſe be made for Life without Impeachment of Waſte, the Leſſee hath by this Leaſe an abſolute Property in the Timber, *&c.* ſo that during the Privity of his Eſtate he may cut down and convert the ſame to his own Uſe *impune*; but if the Clauſe be without Impeachment of Waſte by any Writ of Waſte, then if the Tenant cut down Timber, he ſhall not be puniſhed for it, but the Leſſor may ſeiſe and carry it away, or bring an Action of Trover for it: The Tenant hath not by the Law any general Property in the Trees, but only a ſpecial Property ſo long as they remained Part of the Freehold demiſed, but as ſoon as they were ſevered, his Property in them ceaſed; but this Clauſe will ſave him harmleſs from an Action of Waſte to be brought againſt him: But if the Leſſor grant to the Leſſee Power to make Waſte, the Leſſee hath hereby not only Power to commit Waſte, but alſo to convert to his own Uſe. See 11 *Rep.* 82, 83.

Leaſe for Life without Impeachment of Waſte, Leſſee hath a Property in the Timber: *Aliter*, if Clauſe be without Impeachment by any Writ of Waſte.

B See 1 *Lev.* 309. **That** the Converſion of a Brewhouſe into Tenements, altho' of a greater Value, is Waſte.

Brewhouſe turned into Tenements, tho' of greater Value, is Waſte.

C **Concerning** Waſte maintainable in *London* by Cuſtom, and concerning View in Waſte. 2 *Saund.* 254, 255.

Waſte in *London*, and View in Waſte.

D **If** Waſte be done upon Lands which are let for Term of Years, or for Life, by one againſt whom the Leſſee can have no Remedy in Law for committing this Waſte, the Leſſee is not puniſhable by the Leſſor for this Waſte, except there be a ſpecial Covenant in the Leaſe that he ſhall not commit or ſuffer Waſte to be done. (*Mich.* 23 *Car. B. R.*) So that a ſpecial Covenant of the Party doth bind him, where by the Law he was not bound. A foreign Enemy that invades the Land, and makes Deſtruction in Lands and Houſes, is ſuch an one as the Leſſee can by Law have no Remedy againſt for Waſte done by him. *Quære*, Whether by ſuch Covenant he is puniſhable for ſuch Waſte?

If Leſſee can have no Remedy, he is not puniſhable for Waſte by Leſſor.

E **If** Timber-Trees be growing in the Hedges of a Field or Cloſe let for Years, and the Leſſee cuts them down, the Field ſhall not be forfeited in an Action of Waſte brought againſt the Leſſee; but if the Trees cut did grow ſcatteringly throughout the Field or Cloſe, the whole Field or Cloſe is forfeited by cutting them down. By *German* Juſtice, *Paſch.* 1651. *B. S.* 17 *Junii.*

If Leſſee for Years cuts down Timber-Trees growing in the Hedges of a Field, the Field is not forfeited in an Action of Waſte: Otherwiſe if they grow in the Field.

F **Grubbing** up a White-Thorn Hedge. *Cro. Jac.* 126. Plowing of Meadow-Ground, ſuffering a Wall to be uncovered, the digging of Stone or Gravel, the cutting down or grubbing up of Trees are Waſte. *N. B.* 59, 60.

What Things are Waſte.

G **The** Proceſs in Waſte are a Summons, Attachment, and after that Diſtreſs, and if he comes not then, the Sheriff ſhall take with him twelve Men,

What Proceſs there ſhall be in Waſte.
13 **Ed.** 1. *cap.* 14.
See 6 **E.** 1. *cap.* 5.

and go to the Place waſted in Perſon, and enquire of the Waſte, and return the ſame, and then to paſs into Judgment. See 6 *E.* 1. *cap.* 5. But where there is Judgment in Waſte by *Nil dicit*, the Waſte is acknowledged; ſo that the Sheriff need not go to the Place waſted to enquire of the Damages. *Poph.* 24. See *poſtea.*

Houſes blown down by Tempeſt excuſes Waſte, but not Covenant.

A **Where** Houſes are blown down by Tempeſt, the Law excuſes the Leſſee in Waſte; but in Covenant to repair and uphold, *&c.* it will not. 1 *Plow.* 29.

Where a Leſſee ſhall be liable to an Action of Waſte, and where not.

B **If** the Ground-Timber of an Houſe be in Decay, and ſo the Houſe is ruinous at the Time of the Leaſe, it is a good Plea in an Action of Waſte, if the Houſe fall by ſuch Defect; but if after the Leaſe it become rotten by want of Covering, he ſhall be liable to an Action of Waſte. 2 *Leon.* Caſe 116. *fol.* 95.

It is Waſte to convert a Corn-Mill into a Fulling-Mill.

C **It** is Waſte to convert a Corn-Mill into a Fulling-Mill. *Cro. Jac.* 182. *pl.* 21.

Waſte againſt Leſſee for deſtroying of the Pigeons.

So of a Keeper for deſtroying the Deer.

So for Fiſh in a Pond.

But not againſt a Warrener for deſtroying of the Conies.

D **If** the Leſſee of a Dove-houſe deſtroy all the old Pigeons but one or two Pair, it is Waſte: So if a Keeper deſtroy ſo many of the Deer, that the Park is become not parkable, it is Waſte; ſo of a Pond. 3 *Leon.* Caſe 76. 4 *Leon.* Caſe 381. But deſtroying of Conies, or digging up of Coney-Burroughs is not Waſte in the Leſſee of a Warren. *Noy* 70. *F. N. B.* 87. *a.*

What Intereſt the Words, *Without Impeachment of Waſte*, gives the Party in the Timber.

E **Where** a Man covenants to ſtand ſeiſed to the Uſe of himſelf and Wife for their Lives, without Impeachment of Waſte; after the Huſband's Death, the Wife by Force of the Words, *Without Impeachment of Waſte*, hath ſuch Power, that although no Waſte is made, but an Houſe is blown down without her Default, yet ſhe ſhall have the Timber which was Parcel of the Houſe: And alſo all Timber-Trees blown down by the Wind, and when they are ſevered from the Freehold, either by the Act of the Party, or the Law, and become Chattels, the Property of them is in the Tenant for Life by Virtue of the Words, *Without Impeachment of Waſte.* 11 *Rep.* 83. *b.* 84. *a.* *Sine impedimento* is as good as *ſine impetitione. Cro. Jac.* 216. *pl.* 1.

An Impunity of Waſte muſt be pleaded.

F **The** Party ſhall never have the Advantage of the Liberty of Impunity of Waſte, unleſs he pleads it. 3 *Leon.* Caſe 122.

Leſſee for Years, Remainder for Life, Remainder in Tail; he in Remainder may bring Waſte after the Death of Tenant for Life, for Waſte done in his Time. But with the Tenant for Life's Aſſent he had not been puniſhable.

G **Where** Tenant for Years commits Waſte in the Life of Tenant for Life, and Tenant for Life dies, then he in Remainder in Tail may have an Action of Waſte, as if done in his own Time; altho' in the Life of Tenant for Life the Termor by his Aſſent might have committed Waſte, and he had not been puniſhable afterwards. *Cro. Jac.* 688. *pl.* 4. See *Moor*, Caſe 64.

A **Waſte** may be committed to Glaſs annex'd to Windows, becauſe it is Parcel of the Houſe. And although the Leſſee did do it at his own Coſts; yet it being once Parcel of the Houſe, he cannot take it away again. 4 *Rep.* 63, 64.

Waſte may be committed upon any Thing, Part of an Houſe, although ſet up by the Tenant.

B **Alſo** Wainſcot, be it annex'd to the Houſe either by Leſſor or Leſſee, is Parcel of the Houſe; and there is no Difference in Law whether it be fix'd with great or little Nails, or by Scrues or Irons put through the Poſts or Walls; but if the Wainſcot be in any of thoſe, or otherwiſe fix'd to the Poſts or Walls of the Houſe, the Leſſee cannot remove them; but if he doth, he is puniſhable in an Action of Waſte. 4 *Rep.* 64. *a.*

Wainſcot annex'd to the Houſe, either by Leſſor or Leſſee, is Parcel of it.

C **The** Huſband of Tenanat for Life commits Waſte, then ſhe dies, the Huſband ſhall not be puniſhed for it. 5 *Rep.* 75. *b.*

The Huſband not to be puniſhed after his Wife's Death.

D **Tenant** for Life, Remainder for Life, Remainder in Fee, Tenant for Life commits Waſte, the Remainder-man for Life dies, or ſurrenders his Eſtate in the Life of the Tenant for Life; then, and not before, he in Remainder in Fee may bring Waſte againſt Tenant for Life; becauſe there being an intermediate Eſtate for Life, it is not *ad exhæreditationem* of him in Remainder. 5 *Rep.* 76. *b.*

Where Tenant for Life is puniſhable for Waſte, and where not.

E **See** an Expoſition of the Statue of 11 *H.* 6. *c.* 5. which provides againſt Grants made, to the Intent that the Reverſioner or Remainder-man might not know againſt whom to bring Waſte. 5 *Rep.* 77. *a.*

Againſt whom to bring Waſte.
11 H. 6. cap. 5.

F **Note,** The Statute of 11 *H.* 6. *cap.* 5. ſays, That if Tenant for Life or Years grant over their Eſtates to unknown Perſons to defraud him in the Reverſion, and afterwards Waſte is committed, he in Reverſion may bring his Action of Waſte againſt the firſt Tenant. *F. N. B.* 59. *Letter C.*

Waſte lies againſt Tenant for Life or Years after the granting over of their Eſtates.
11 H. 6. cap. 5.

G **An** Occupant ſhall be puniſhable for Waſte, becauſe he hath the Eſtate of the Leſſee for Life. 6 *Rep.* 37. *b.*

An Occupant ſhall be puniſhed for Waſte.

H **Tenant** by Statute Merchant, Staple, or *Elegit,* are not puniſhable for Waſte, *Ibid.*

Tenant by *Elegit* or Statute, not.

I **In** a Writ of Waſte the Jury muſt have a View by the Statute, and the Judgment may be with or without *per viſum Juratorum.* *Show. Rep.* 3.

View in a Writ of Waſte.
How the Judgment to be.

K **In** Waſte the Jurors ought to have a View of every Parcel of the Land, to aſſeſs the Damages. *Noy* 5.

How the View to be.

L **Executor** *de ſon Tort* of a Term chargeable in Waſte. 3 *Lev.* 128.

Executor *de ſon Tort* is chargeable in Waſte.

M **Caſe** lies for him in Remainder of a Copyhold who commits Waſte. *Ibid.*

Caſe lies for him in the Remainder of a Copyhold who commits Waſte.

How to plead *Nul Waſte fait.*

A **How** to plead *Nul Waſte fait.* *Lutw.* 1550.

Where the Writ and Count ſhall name the Statute.

B **Where** the Writ and Count ſhall name the Statute it is grounded upon, and where not. *Lutw.* 1548, 1549.

Where Coſts ſhall be recovered, and where not.

8 & 9 W. cap. 10.

C **In** all Actions of Waſte, wherein the ſingle Value or Damages found by the Jury doth not exceed twenty Nobles, the Plaintiff ſhall have his Coſts. 8 *&* 9 *W. cap.* 10. But at the Common Law no Coſts ſhall be recovered.

Cutting of Under-wood is not Waſte, but eradicating of it is.

D **Altho'** the cutting of Under-wood is not Waſte, yet the eradicating of it is Waſte. 4 *Leon.* Caſe 381.

Eradicating of White-Thorns is Waſte, but cutting down and ſelling them is not.

E **Eradicating** of White-Thorns is Waſte, but *ſuccidendo & vendendo* is not, unleſs they grew in a Paſture for Defence of Cattle, and were of the Greatneſs of Timber. *Cro. Jac.* 126. *pl.* 15.

One Tenant in Common ſhall have Waſte againſt his Partner.

How it is to be.

13 E. 1. cap. 22.

F **One** Tenant in Common ſhall have it againſt his Companion, and when it is come to Judgment, the Defendant ſhall chuſe to take his Part in a Place certain by the Sheriff and his Jury, or elſe ſhall grant that he will take nothing in the Land, but as his Partner will take.

Where the Waſte and Damages ſhall be enquired of, and where the Damages only.

Where there is a *Nil dicit* to the Declaration, how to be.

G **If** the Defendant in a Writ of Waſte loſeth by Default at the Grand Diſtreſs, Enquiry ſhall be made of the Waſte, and to what Damages; but if he loſeth by *Nil dicit*, Confeſſion, or *Non ſum informatus*, the Waſte ſhall not be enquired of, but only Damages. *Cro. Eliz.* 18. *pl.* 4. and 263. So alſo it is where the Defendant appeared upon the Diſtreſs, and made no Anſwer to the Declaration, but let Judgment go by Default. *Cro. Eliz.* 290. *pl.* 10. *Poph.* 24, 25.

Plea.

H **If** the Defendant pleads he repaired, *&c.* before the Action brought, 'tis good, 3 *Salk.* 150.

Againſt whom it lies.

I **Lies** againſt an Executor *de ſon tort* of a Term. *Comberb.* 7.

Verdict, if good.

K **A Verdict** in Waſte for cutting Trees *ſparſum* in 40 Acres, and no Waſte *pro reſid'*, whether good. See *Comberb.* 113.

Void by Jurors.

L **On** a Judgment in Waſte it need not appear on the Record that the Jurors had the View. *Ibid.* 113.

Prohibition.

M **See** a Prohibition to ſtay Waſte againſt a Parſon. *Ibid.* 59.

Decree.

N **A Decree** in the Exchequer for reſtraining Waſte pleaded, *&c.* *Mod. Caſes in Law and Equity* 109.

Way and Highway.

See { Pariſh.
Preſcription.

Way, what.

A There are three Kinds of Ways:

B 1. A Foot-way, which is called Iter.

C 2. The ſecond is a Foot-way and an Horſe-way, and this is commonly called a Pack and Prime-way, becauſe it is both a Foot-way, which was the firſt or Prime-way, and a Pack or Drift-way alſo.

D 3. The third is Via, which contains the other two, and alſo a Cart-way, &c. and this twofold, viz. Regia Via, the King's Highway for all Men; and Communis Strata, belonging to a City or Town. Co. Litt. 56. a.

The Pariſh is bound to repair the Highways.

E If a Highway lie within a Pariſh, the Pariſh is of common Right bound to repair it, except it appear that it be to be repaired by ſome other Perſon, either by Reaſon of Tenure, or by Preſcription. (*Mich.* 1650. *B. S.* 24 *Oct.*) In regard of the Convenience of doing it, and of the Benefit they have of the Way and Uſe of it above others.

He that incloſes any Part of a Way muſt repair the Way adjoining.

F If any Perſon do encloſe any Part of a Way or Waſte adjoining to a Highway, he thereby doth take upon him to keep the Way adjoining in Repair, for thereby he claims particular Intereſt in the Soil. 1651. *B. S.* elſe he could not encloſe it.

A Miniſter keeping Coach and Horſes obliged to ſend out a Team towards repairing the Highways.

G A Miniſter in Holy Orders keeping only a Coach and Horſes, ſhall be obliged to ſend out a Team towards the Repair of the Highways, according to the Statute, and ſo adjudged by the Chief Juſtice *Hale*, *&c.* Becauſe Clergymen are not exempted from the publick Duties of the Nation; and although the Miniſter keep a Coach and Horſes only, and no Team, yet a Coach and Horſes doing as much Prejudice to the Highways as a Cart and Horſes, it it is very fit the Owner ſhould contribute with his Neighbours to the Repairs thereof.

How a Way may be granted.

A Way may be granted originally by Deed of Grant, but it cannot be by a Bargain and Sale; for nothing but the Uſe paſſed by the Deed, and there cannot be an Uſe of a Thing not *in eſſe*, until created. *Cro. Jac.* 189, 190. A

Act for the repairing of the Highways. 3 & 4 W. & M. cap. 12.

See the Act for the better repairing and amending of the Highways. 3 *&* 4 *W. & M. cap.* 12. B

Part of the Act of 7 & 8 W. 3. cap. 29. is repealed by 6 Annæ.
To draw only with ſix Horſes in a Road.

So much of the Act of 7 *&* 8 *W.* 3. *cap.* 29. as concerns the drawing with a Pole between the Wheel-horſes or in double Shafts, is hereby repeal'd, and it is enacted, That no travelling Waggon, Cart or Carriage, wherein Goods or Wares ſhall be carried or drawn, ſhall go in any publick Road with above ſix Horſes, Oxen or Beaſts, upon Forfeiture of 5 *l.* one Moiety for the Repair of the Highways, the other to the Diſcoverer, if he be an Inhabitant of ſuch Town, or Vill, or Place; the Penalty to be levied by Diſtreſs of all or any of the ſaid Horſes, by Warrant under the Hand and Seal of a Juſtice; and if not paid within three Days, then to ſell, rendring the Overplus, Charges being deducted. C

A Surveyor ſhall forfeit 5 *l.* for neglecting to put this Act in Execution. D

Where they may have more than ſix Horſes.

Note, By an Order of the Seſſions entred with a Clerk of the Peace, they may draw up Hill with as many Horſes as are neceſſary. E

Where they may have what they pleaſe.

Note alſo, This Act doth not extend to Carriages employed in Huſbandry and manuring of Land, and in carrying of Hay, Straw, Corn, Coal, Chalk, Timber for Shipping, Materials for Building, Stones of all Sorts, or Ammunition or Artillery for her Majeſty's Service: Afterwards by another Statute made 9 *Annæ*, Power is given to any Perſon to diſtrein the Horſes, and to deliver them to the Surveyor of the Highways, or other Pariſh Officer where the Offence is, and if the five Pound be not paid in three Days, then the Officer, by Warrant of a Juſtice, to ſell the Diſtreſs, and deliver the Money to the Juſtice to be diſtributed as the Act requires, rendring the Overplus to the Owner, after deducting of Charges, that if the Offender ſhall preſently pay the 5 *l.* the Party who receives it ſhall immediately pay it to the Juſtice to be diſtributed as aforeſaid. F

Some Alterations made by 9 Annæ.

Penalty for not carrying the Cattle diſtreined to an Officer.

Forfeiture of 20 *l.* for the Perſons ſeiſing and not carrying the Cattle diſtreined to an Officer, to be levied by Diſtreſs by a Juſtice's Warrant, and if no Diſtreſs, to be committed to the County Gaol 'till paid, to be diſtributed, one Moiety to the Informer, the other for the Repair of the Highways. G

A **The** Perſon employed by the Carrier, or aſſiſting in driving of a travelling Waggon, ſhall forfeit 5 *l.* to be levied and diſpoſed of as aforeſaid.

The Perſon employed by the Carrier ſhall forfeit 5 *l.*

B **So** much of the Act of 6 *Annæ*, as relates to the drawing up Hills with more than ſix Horſes is repealded.

A Repeal of Part of 6 Annæ.

C **That** where Horſes allowed to draw a Waggon ſhall not be ſufficient to draw up a ſteep Hill, or out of a foul Place, they may have the Aſſiſtance of another Cart or Waggon travelling that Road, with the Owner's Conſent, to help up ſuch ſteep Hill, or out of ſuch foul Ways.

Where they may have Aſſiſtance.

D **The** Juſtices of the Peace of any County, City, *&c.* or the major Part of them, (five at the leaſt) may at their Quarter-Seſſions enlarge or widen any Highways in their reſpective Counties, ſo that the Ground to be taken into the ſaid Highways do not exceed eight Yards in Breadth; and that they do not pull down any Houſe, nor take away any Ground from Garden, Orchard, Court or Yard. How to be done, and what Satisfaction to be made, and how the Money to be raiſed, See the Statute of 8 *&* 9 *W. cap.* 15.

Stat. 8 & 9 W. c. 15. for enlarging of Common Highways.

E **Where** any Common Highway ſhall be encloſed after a Writ of *ad quod dampnum* executed, any Perſon aggrieved by ſuch Encloſure, may complain to the Juſtices at the next Quarter-Seſſions after ſuch Inquiſition, who may hear and finally determine the ſame; but if no ſuch Appeal be made, then the Inquiſition and Return recorded by the Clerk of the Peace ſhall be for ever binding. 8 *&* 9 *W.* 3. *cap.* 16.

Where Complaint muſt be made upon the Execution of a Writ of *ad quod dampnum*, and when.

And if no Appeal, then to be for ever binding.

8 & 9 W. 3. cap. 15.

F **How** to plead a Writ of *ad quod dampnum*. *Cro. Car.* 266. *pl.* 16.

How to plead a Writ of *ad quod dampnum*.

G **A Man** ſeiſed of three Parcels of Land, ſells two, but reſerves no Way, and there is no other Way than over the other two; he ſhall have the Way, becauſe his Land muſt not lie freſh. *Lutw.* 1248.

Where the Law will give a Man a Way to his Land.

H **An** Indictment laid to be *Communis Via pedeſtris ad Eccleſiam de W. pro Parcchianis*, it will be intended a private Way only, and not indictable. 1 *Ventr.* 208.

A private Way is not indictable, nor a Church-way.

I **A Cuſtom** laid in a Pariſh for a Way to a Cloſe, is naught. *Lutw.* 1319. *Cro. Car.* 419.

Cuſtom laid in a Pariſh for a Way to a Cloſe.

K **How** to juſtify for a Way from one Place to another, *& ſic retrorſum*. *Lutw.* 1508.

How to juſtify for a Way.

L **Juſtification** for a Way not well pleaded. 3 *Salk.* 275.

The like.

M **In** pleading of a private Way there ought to be ſhewn *Terminus a quo*, and *Terminus ad quem*. 2 *Leon. Caſe* 13.

How to plead a private Way.

How a Preſcription to a Way ought to be.

A Preſcription for a Way ought to be in him who hath the Inheritance. *Cro. Car.* 418. *pl.* 8, 419. A

Articles for a Way amounts to a Grant.

Articles for a Way thro' his Grounds, amounts to a Grant of the Way. 3 *Lev.* 305. B

What makes an Highway.

A Man builds Houſes and leaves Ground for a Street between the Houſes, he hath thereby loſt the Property of his Ground, and it is become the King's Highway. C

What is a Common Highway.

What is a private Way.

If a Way leads to a Market-Town, and is a Way for all Travellers, and communicates with a great Road, *&c.* it is a common Highway; but if it leads only to a Church, private Houſe, or Village, it is only a private Way. 1 *Ventr.* 189. D

What to do where the Way is founderous.

Where the Highway over a common Field or open Field is founderous, the King's Subjects may go out of the Track-way, nay, although there be Corn ſown. The King againſt *Duncomb. Trin.* 10 *Car. B. R. Danv. Abr.* 783. N° 1. E

Where the old Way is plowed up, and a new Way made.

If there be a common Foot-way through a Cloſe by Preſcription, and the Owner of the Cloſe plows up the Way, and ſows it, and lays Thorns at the Side of it, and leaves in the ſame Cloſe another Foot-way, which is uſed by Foot Paſſengers accordingly, any Man may juſtify going in the ſaid Way, for the Owner of the Soil ſhall not puniſh the Tort which himſelf was the Occaſion of. *Telv.* 141, 142. F

One Way cannot be ſtopp'd, and another ſet out with an *ad quod dampnum.*

One Way cannot legally be ſtop'd, and another laid out, without the King's Licence granted after the Return of an Inquiſition upon an *ad quod dampnum. Cro. Car.* 266, 267. *Vaugh.* 341. But now ſee the Statute made 8 & 9 *W.* 3. *cap.* 16. how it may be done. G

Who ought to repair a publick Way.

Where no particular Man is bound, the Pariſh of common Right ought to repair a publick Way. 1 *Ventr.* 183, 189. *Style* 163, 364. H

And who a private.

Private Ways are to be repaired by the Village or Hamlet, and ſometimes by particular Perſons. 1 *Vent.* 189. I

Who ſhall repair where there are Encloſures.

How to be when laid open again.

If a Man encloſes Land on one Side of the Way, which was anciently encloſed of the other Side, he that makes the new Encloſure muſt repair the whole Way. 1 *Sid.* 464. But if there hath not been any ancient Encloſure on the other Side, he ſhall repair but half the Way. *Ibid.* But if afterwards he lays it open again, he ſhall be diſcharged from ſuch Reparation. 2 *Saund.* 160. *Cro. Car.* 366. 2 *Saund.* 160. K

A **Preſentment** by a Juſtice of Peace upon his own View, that a Highway was out of Repair. Upon Not-guilty pleaded, the Jury found that it was out of Repair; but that it was not a Highway. *Carthew* 212.

Finding of Jury.

B **Where** there is a common Highway which hath been always repaired by the Country, and *J. S.* who hath Lands on both Sides of this Highway, encloſes his Lands on both Sides of the Way with Hedges and Ditches; by this he hath taken upon himſelf the Reparation of the Highway, and freed the Country of the Charges of it, and is always after bound to repair it. *Danv. Abr.* 783. *Letter* B.

Where a Man becomes obliged to repair an Highway, which the County was bound to do.

C **If** it is the Occupier, and not the Owner of the Land, who is chargeable with the Repairs of the Highway. 2 *Roll. Rep.* 412. But otherwiſe it is where there is no Occupier, but the Owner ſuffers the Land to lie freſh. *Ibid.* and *Palm.* 389.

The Occupier, and not the Owner, is chargeable with Repairs.

D **A Man** ſells Land, and afterwards the Vendee claims a Way over the Plaintiff's Land, there being no other convenient Way adjoining; the Way remains, becauſe it is a Thing of Neceſſity. *Cro. Jac.* 170. *pl.* 10, 190. and will well paſs without being mentioned in the Deed.

A Man ſells Land, the Vendee ſhall have a Way over his other Land, tho' not mentioned in the Deed.

E **If** a Man hath three Cloſes lying together, and ſells two of them, reſerving the middle Cloſe, and hath not any Way to it, but through one of the other which was ſold, yet he ſhall have a Way as reſerved to him by Law. *Cro. Jac.* 170. *pl.* 10. 2 *Roll.* 60.

A Man hath three Cloſes, and ſells two, without reſerving a Way, the Law gives it him.

F **If** a Man hath a Way for Carriages from *D.* to *Black Acre* over my Cloſe, and then purchaſes Land adjoining to *Black Acre*, he cannot uſe the Way with Carriages to the Land adjoining, though he comes firſt to *Black Acre*, and thence to the Land adjoining. *Danv. Abr.* 784. N° 3.

Where a Man who hath a Way over a Cloſe purchaſeth other Lands, he ſhall not have the Way to his purchaſed Lands.

G **As** well in the Caſe of a Highway as of a Pathway, the Soil of the Way belongs to him who hath the Lands on both Sides. 2 *Leon. Caſe* 182.

To whom the Soil of a Way belongs.

H **Where** a Man encloſes his Land on both Sides of the Way, whereby it is ſtreightned, yet altho' he makes it better than it was before, by Reaſon of the Encloſure, he is bound to keep it in Repair at his own Charges, tho' the Pariſh was bound to do it before. *Cro. Car.* 366. *pl.* 3.

He who encloſes on both Sides muſt keep it in Repair.

I **The** Freehold and Soil of the Highway belongs to the Lord of the Soil; ſo do the Profits, as Trees, *&c.* *Danv. Abr.* 785.

To whom the Freehold and Soil, and Trees upon the Waſte belongs.

K **How** a Way may be claimed by Preſcription. See Title **Preſcription.**

Finding of Jury. **The** Jury found that *reparare non debet*, but did not find who ought to repair, yet adjudged good. 3 *Salk.* 392. A

Indictment. **Indictment** for ſtopping a Foot-way to a Church, *ad commune nocumentum*, held good. *Ibid.* B

Plea. **Where** a Pariſh is indicted for not repairing a Way they cannot plead Not-guilty, but muſt ſhew who is to repair either by Tenure or Preſcription. *Ibid.* C

Where the Defendant may be charged *ratione tenure. Ibid.* D

Fine before Verdict. **Upon** an Indictment for not repairing, the Defendant may be admitted to a Fine before Verdict, upon a Certificate that 'tis repaired. *Ibid.* 393. E

Highway. **What** ſhall be accounted a Highway, and what not. *Ibid.* F

Will.

See Averment.
See Deviſe.
See Witneſſes.

Will or Teſtament, what. **T**Eſtamentum eſt Teſtatio Mentis & Index Animi Sermo; **ſo as the Deviſor ſpeaks by his Will what his Mind is to have done after his Death: But in Law,** Ultima Voluntas **is uſed where Lands are deviſed, and** Teſtamentum **where Chattels are bequeathed. And to a Will for Land there muſt be three Witneſſes at the leaſt, who muſt ſet their Hands as Witneſſes in the Preſence of the Deviſor; but to a Will for Chattels, two Witneſſes are ſufficient.** See Co. Litt. 111. a. G

Deviſee by Will is in the ſame Condition, as Grantee by Act in Law. **Regularly** when an Eſtate is deviſed by Will, the Law puts the Deviſee in the ſame Condition as by any Act executed by the Parties, the Law puts the Grantee in; as for the Purpoſe, where a Term is deviſed, the Deviſee is in by Act of Law without Attornment, but not in Caſe of a Grant at the Common Law; alſo in the Caſe of a Deviſe of a Free- H hold, the Deviſee is in without Livery; but it is not ſo in the Caſe of a Grant at the Common Law.

A **A Will** which doth only concern the bequeathing Lands, *&c.* may to perpetuate the Teſtimony be proved in Chancery; but if it be a mixt Will, and doth concern Lands, Goods and Chattels alſo, it may be proved in the Spiritual Court, *quoad* the Goods, and if they meddle any farther, this Court will grant a Prohibition to ſtop them. *Hill.* 22 *Car. B. R.*

What Wills may be proved in Chancery.

B **The** Probate of a Will *per Teſtes* in the Spiritual Court is no Coroboration of the Will. (*Hill.* 22 *Car. B. R.*) Altho' the common Opinion is otherwiſe; for if it come in Queſtion at the Law, whether a Will or no, it is no Evidence to a Jury to prove it a Will, becauſe it was proved *per Teſtes*; but the Will reſts as much upon Proof, as if it had been proved in common Form, for the Law takes no Notice of Witneſſes examined in the Spiritual Court.

Probate of a Will *per Teſtes* is no Coroboration of it.

C **A Will** in Writing is a good Will to convey Lands, although the Will be not ſealed. (*Paſch.* 23 *Car. B. R.*) For the Statute of 32 *H.* 8. that enables to convey Lands by Will, ſpeaks nothing of ſealing, but only of writing ſuch Wills, and the Will declares the Mind of the Teſtator, as well by the Writing, as if it were ſealed.

Written Will not ſealed is good to convey Lands.

D See 3 *Lev.* 86. **The** Teſtament ſigned, and Revocation upon the ſame Papers not ſigned.

Will ſign'd, and Revocation not.

E **A Will** by which Lands are conveyed, ought not to be kept in the Prerogative Office, for it doth properly belong to the Legatee of the Lands to ſupport his Title at the Common Law by, if he be queſtioned for the Lands, and is Part of his Evidence, and therefore it is Reaſon he ſhould have the Cuſtody of it. (*Mich.* 1649.) But they may take a Copy of it, and enter it into their *Leidger* Book, as they uſe to do; but if they ſue to have it remain with them, this Court will grant a Prohibition.

A Will that conveys Lands ought not to be kept in the Prerogative Office.

F **The** Teſtator may, if he be at that Time of ſane Memory, deſire another Perſon to ſet his Hand and Seal to his Will for him; and if he do it, the Will is a good Will, though the Teſtator did it not himſelf. (*Paſch.* 1650.) *Maii* 5. For it would have been good, though no Hand and Seal had been ſet to it.

If Teſtator of ſane Memory deſires another to ſign and ſeal his Will, it is good.

G **If** ones makes his Will in his Skickneſs by the over Importunity of his Wife, to the Intent he may be at quiet, and not vexed and troubled by her; ſuch a Will ſhall be adjudged to be made by Conſtraint, and is not a good Will. By *Rolle* Chief Juſtice, in the Caſe of one *Hacher* and *Newhorne* tried at the Bar, *Mich.* 1654. *Quære tamen*, for *voluntas non poteſt cogi*, and it differs from the Caſe of making a Deed by Menace or Dureſs, as to me ſeems.

A Will made by Conſtraint is not good.

The

The Statute of Wills for deviſing of Lands.
32 H. 8. cap. 1. ſect. 1.

29 Car. 2. cap. 3.

A The Statute gives to all Perſons having any Manors, Lands, Tenements and Hereditaments holden in Socage-Tenure, Liberty and Power, to give and deviſe the ſame by his laſt Will in Writing, or otherwiſe, by any Act lawfully executed at his free Will and Pleaſure. 32 *H.* 8. *cap.* 1. *ſect.* 1. See *poſtea* the Statute of *Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3. See alſo Title **Deviſe.**

Muſt be only Fee-ſimple.
32 H. 8. cap. 5. ſect. 3.

B Note, They muſt be Eſtates in Fee-ſimple only by 33 *H.* 8. *cap.* 5. *ſect.* 3.

Coparceners and Tenants in Common in Fee may deviſe.

C Alſo all Coparceners or Tenants in Common in Fee-ſimple of any Lands, Reverſions, Remainders, Rents, *&c.* may deviſe at their Pleaſure. *Sect.* 4.

How Words in a Will to be conſtrued, how marſhalled.

D Words in a Will ought to have a favourable Conſtruction, becauſe made ſometimes *in extremis inops conſilii*, and ſhall be ſo marſhalled to make it good, that thoſe which are laſt ſhall be put firſt. 2 *Plow.* 540. *b.* 541, 546. *a.*

How a Man muſt be qualified when he makes his Will.

E It is not ſufficient that the Teſtator hath his Memory to anſwer to familiar and uſual Queſtions when he makes his Will; but he ought to have a diſpoſing Memory, ſo that he is able to diſpoſe of his Lands with Underſtanding and Reaſon. 6 *Co.* 23. *a.*

A Man ought to be of as good diſpoſing Memory when he revokes, as when he makes his Will.

F A Man ought to be of as good diſpoſing Memory when he revokes his Will, as he is when he makes it. *Cro. Jac.* 497. *pl.* 3.

How to conſtrue Words in a Will.

G It is a general Rule to expound Wills according to the Intent, and the Intent ought to be taken out of the Words of the Will, and not by any Averment. *Latch* 35, 36.

A Deviſe of the Occupation is a Deviſe of the Land.

H A Deviſe of the Occupation of the Land during the Infancy of *J. S.* is a Deviſe of the Land itſelf during that Time. *Ibid.* 543. *a.*

Where Probates of Wills, *&c.* of Perſons dying, for Wages or Work in the Queen's Dock, ſhall be granted.
4 & 5 Annæ.

I By the the Statute of 4 & 5 *Annæ*, it is enacted, That the Power of granting Probates of Wills, and Letters of Adminiſtration of the Goods of Perſons dying, for Wages or Work done in her Majeſty's Docks and Yards, ſhall be in the Ordinary of the Dioceſe, or ſuch other Perſon to whom the ordinary Power of Probate of Wills, or granting of Letters of Adminiſtration, do belong where ſuch Perſon ſhall die; and that the Salary and Wages for Pay due to ſuch Perſon from the Queen, her Heirs or Succeſſors, for Work done in any of the Docks or Yards, ſhall not be deemed *bona notalibia*, whereby to found the Juriſdiction of the Prerogative Court.

A The Ordinary grants Adminiſtration, and afterwards a Will concealed was found: The Adminiſtration is void, and cannot be made good by the Executor's renouncing afterwards. 1 *Plow.* from 276. to 283.

Adminiſtration is granted, afterwards a Will is found, the Adminiſtration is void.

B A Will was written ſince the Statute of *Frauds and Perjuries*, and Lands deviſed, but did not ſubſcribe his Name, but ſealed it, and it was ſubſcribed by three Witneſſes, and good; for being written by himſelf, and his Name in the Will, it was a ſufficient Signing. 3 *Lev.* 1.

A Will written by the Deviſor, and only ſealed, with three Witneſſes, is good.

C A Will was made and ſigned by the Teſtator, and afterwards a Revocation, *quoad* Part upon the ſame Paper, and by three Judges againſt one it is a Revocation within the Statute of *Frauds*. 3 *Lev.* 86.

What is a Revocation within the Statute of Frauds.

D An Infant makes his Will for Lands, and ſigned and ſealed it in the Preſence of three Witneſſes; and when he came of full Age, and lay ill, he called for it, and then declared it to be his Will; and adjudged, That it being void at its Creation, no Act after he came of Age could make it good. 2 *Jac. B. R.*

An Infant made his Will, and at full Age called for it, and declared it to be his Will; adjudged void.

E By the Statute of *Frauds* and Perjuries, it is enacted, That all Deviſes and Bequeſts of Lands ſhall be in Writing, and ſigned by the Party ſo deviſing, or by ſome other Perſon in his Preſence, and by his expreſs Directions, and ſhall be atteſted and ſubſcribed in the Preſence of the Deviſor, by three or more credible Witneſſes, or elſe be utterly void.

How Deviſes of Lands ſhall be by the Statute of 29 Car. 2. cap. 3.

F Alſo, That no Deviſe in Writing, to be revocable otherwiſe than by ſome other Will or Codicil in Writing, or other Writing declaring the ſame, or by burning or cancelling, tearing or obliterating by the Teſtator, or in his Preſence by his Direction and Conſent: But all Deviſes. *&c.* ſhall remain in Force until the ſame be burnt, *&c.* by the Teſtator, or his Directions, in Manner aforeſaid, or unleſs the ſame be altered by ſome other Will or Codicil in Writing, or other Writing of the Deviſor, ſigned in the Preſence of three or four Witneſſes declaring the ſame.

What ſhall make ſuch a Will void.

G *A.* makes his Will in Writing, and makes his Wife Executrix, and gives her all the Reſidue after Debts and Legacies paid, three Days after the Wife dies, *A.* takes Notice of it, makes a nuncupative Codicil ten Days afterwards, and gives to *B. C.* all that he had given to his Wife, and dies; and reſolved by the Delegates, that the Codicil is good, for by the Death of the Wife, the Will in Writing became void. *Raym.* 334.

A. makes his Wife Executrix to whom he gives all the Reſidue, ſhe dies before him, then by a nuncupative Will he gave to *C. D.* all that he had given his Wife, held a good nuncupative Will.

How Eſtate *pur auter Vie* ſhall be diſpoſed of: And if not, how it ſhall be then.

Aſſets by Diſcent.

A Alſo an Eſtate *pur auter Vie* ſhall be deviſable by Will in Writing as aforeſaid; and if no ſuch Deviſe ſhall be made, the ſame ſhall be chargeable in the Hands of the Heir, if it ſhall come to him by reaſon of a ſpecial Occupancy, as Aſſets by Diſcent, as in Caſe of Lands in Fee; and if there be no ſuch Occupancy, it ſhall go to the Executors or Adminiſtrators of him who had the Eſtate thereof by Virtue of the Grant, and be Aſſets in their Hands.

Of nuncupative Wills. In this Clauſe there is an Alteration made by 4 & 5 Annæ, *For the Amendment of the Law.*

B Alſo, That no nuncupative Will ſhall be good, wherein the Eſtate exceeds 30 *l.* that is not proved by three Witneſſes at the leaſt; nor unleſs the Teſtator, when he pronounceth the ſame, bid the Perſon preſent bear Witneſs that ſuch was his Will, (or Words to that Effect) nor unleſs the ſame was made at the laſt Sickneſs of the Dead, and in his Houſe, or where he had reſided ten Days or more next before the making of ſuch Will, except in Caſe of ſudden Surpriſe where ſuch Perſon was taken ſick from his own Houſe, and died before he returned.

What Teſtimony ſhall be received after ſix Months.
See 4 & 5 Annæ.

C Alſo, That after ſix Months paſs'd after the ſpeaking of the Teſtamentary Words, no Teſtimony ſhall be received, except the ſame, or the Subſtance thereof, were committed to Writing within ſix Days after the making of the Will.

Who are good Witneſſes to prove a nuncupative Will.

D See the late Act *For the Amendment of the Law*, That all ſuch Witneſſes as are and ought to be allowed to be good Witneſſes upon Trials at Law, by the Laws and Cuſtoms of this Realm, ſhall be deemed good Witneſſes to prove any nuncupative Will, or any Thing relating thereunto.

When a Probate of a nuncupative Will ſhall paſs the Seal.

E Alſo, That no Probate of any nuncupative Will ſhall paſs the Seal till fourteen Days after the Teſtator's Death, nor ſhall it at any Time be proved till Proceſs ſhall be iſſued out to call in the Widow, or next of Kin to the Dead.

How a Will in Writing concerning Goods ſhall be repealed.

F Alſo, No Will in Writing concerning Goods ſhall be repealed, or altered by any Words, except the ſame be in the Life of the Teſtator committed to Writing, and read unto and allowed by him, and proved by three Witneſſes at leaſt.

Not to extend to Soldiers or Mariners.

G Note, This Act ſhall not extend to Soldiers in actual Service, or Mariners at Sea.

Nor alter the Juriſdiction of the Spiritual Court.
29 Car. 2. cap. 3.

H Note, This ſhall not alter the Juriſdiction of the Spiritual Court. Statute of *Frauds and Perjuries.* 29 *Car.* 2. *cap.* 3.

A Feme Sole deviſes her Lands to *J. S.* and afterwards marries him, it is void.

I A Feme Sole makes a Will, and deviſes her Lands to *J. S.* ſhe afterwards marries him, and dies in his Life-time, the Deviſe is void. 4 *Rep.* 60. *b.* 61. *a. b.*

A Man is bound to permit his Wife to make a Will; though ſhe cannot make a Legal Will, yet he muſt perform ſuch Will as ſhe makes.

A **A Man** is bound to permit his Wife to make a Will; though ſhe cannot make a legal Will, yet he muſt perform ſuch Will as ſhe makes. 5 *W. & M.* in *B. R.* and *Cro. Car.* 219. *pl.* 2.

By Feme Covert.

B **A Will** made by a Feme in Purſuance of a Power reſerved before Marriage is not properly a Will, nor proveable by the Ordinary. 2 *Salk.* 313.

Revocation.

C **Special** Verdict finding a Will of Lands, and that afterwards the Teſtator made *alium Teſtamentum,* imports not any Revocation of the former. *Ibid.* 592.

The like.

D **Yet** a Will of Perſonal Eſtate was preſumed to be revoked by Alteration of the Teſtator's Circumſtances. *Ibid.*

Witneſs.

E **Legatee** may be a Witneſs againſt a Will, but not for it. *Ibid.* 547, 691.

Limitation.

F **Words** ſounding Conditional are to be taken as Limitation in a Will. *Ibid.* 570.

Prohibition.

G **See** a Prohibition denied as to probate of a Will of Lands and Goods, *Non Compos* of the Teſtator being ſuggeſted, *&c.* *Ibid.* 552, 547.

If good.

H **A Will,** though Informal, may be good. 3 *Salk.* 127.

Conſtruction.

I **Why** to be conſtrued favourably more than any other Conveyance. *Ibid.* 127, 128, 394.

Subſcribing Witneſſes.

K **What** ſhall be a ſufficient Subſcribing of the Witneſſes in the Preſence of the Teſtator. *Ibid.* 395.

The like.

L **Two** Witneſſes to a Will and one new Witneſs to a Codicil, doth not make three Witneſſes to the Will. *Ibid.* *Carth.* 35.

Witneſſes.

M **A Will** atteſted by three Witneſſes, whereof the Deviſee of the Lands is one, not good, becauſe he cannot be a Witneſs for himſelf. *Carth.* 514.

Two Wills.

N **See** two laſt Wills, and both good, *i. e. reddendo ſingula ſingulis.* *Comber.* 209.

Infant.

O **An** Infant of Fourteen may make a Will of Perſonal Goods. *Ibid.* 50.

Want of Executor.

P **One** may make a Will and yet die inteſtate, *i. e.* where no Executor is appointed. *Ibid.* 20.

Revocation.

Q **A latter** Will (not appearing) cannot revoke a former. *Ibid.* 90, 91.

A Will void *ab origine.*

R **A Will** void *ab initio* (as for Infancy, *&c.*) cannot be made good by a ſubſequent Act. *Ibid.* 84.

Revocation.

S **Nor** a good Will revoked by any ſubſequent Writing intended for a Will, unleſs that alſo be a good Will. *Ibid.* 156, 157.

The Will to be produced.

T **And** no Proof admitted of a Will in Writing without producing the Will itſelf. *Ibid.* 395.

Subſcribing Witneſſes.

A Will ought to be ſubſcribed by the Witneſſes in View of the Teſtator, or in ſuch a Place (if he looks that Way) as he may ſee them ſubſcribe it. *Comberb.* 158. A

The like.

The Atteſtation of a Will is good within the Statute of Frauds, if the Teſtator might ſee the Witneſſes ſign, tho' he did not. 2 *Salk.* 688. B

Words ſupply'd in Favour of the Teſtator's Intention.

The Law will by Conſtruction ſupply Words of Art in Favour of a Teſtator's Intent, who is ſuppoſed *inops conſilii*. *Skin.* 19. C

Subſcribing Witneſſes.

Two Perſons who were two of three Witneſſes to a Will of Lands, purporting to be made according to the Statute, giving Evidence that the Teſtator did not publiſh the Will; the Court directed the Jury to find it a good Will upon collateral Proof to fortify it, and committed the Witneſſes: So likewiſe where two gave Evidence that the Teſtator was *non compos*; and the third Witneſs, who was the Scrivener that wrote the Will, that he was. *Ibid.* 79. D

Statute of Frauds.

One before the Act of Frauds, *&c.* makes his Will and ſigns it, declaring it to be his Will in the Preſence of one Witneſs, and dies after the Act; this not within the Act. *Ibid.* 227. E

Not ſigned, yet a good Will.

A Will wrote by the Hand of the Teſtator, and declared in the Preſence of three Witneſſes, tho' not ſign'd by him in ſuch Preſence, a good Will. *Ibid.* F

Republication.

One makes his Will, ſigns it, and declares it in the Preſence of three Witneſſes, then does an Act which amounts to a Revocation, and then republiſhes his Will in the Preſence of two Witneſſes, a good Will. *Ibid.* G

Subſequent Clauſes.

A general ſubſequent Clauſe in a Will ſhall never be extended further than the firſt Clauſe which is ſpecial. *Ibid.* 319. H

Subſcribing Witneſſes.

If there are three ſubſcribing Witneſſes to a Will, 'tis ſufficient within the Statute of Frauds and Perjuries, though upon the Trial one of them would ſwear that he ſaw the Teſtator ſeal and publiſh his Will, if it be proved to be his Hand, and that he ſet it as a Witneſs to the Will. *Ibid.* 413. I

Words, how to be taken.

Words in Wills are to be taken in that Senſe as is conſiſtent with Reaſon. *Mod. Caſes in Law and Equity* 60. K

See the Rules of Conſtructions of Words in Wills. *Ibid.* 123, 4, 5. L

A Will cancell'd.

A Will of *Gavelkind* Lands cancelled by the Teſtator. *Ibid.* 208. M

A **Prohibition** to the Spiritual Court on a Suit there, upon a Bond given to bring in a Will they had delivered to the Obligor. *Mod. Caſes in Law and Equity* 327. Prohibition.

B **Though** a Teſtator does not diſpoſe of his Eſtate with that Prudence another might, yet 'tis no Proof of his being *Non compos.* *Ibid.* 59. *Non compos.*

C **Making** a ſecond Will is a Revocation of the firſt, and after the Probate of the firſt was confirmed by the Delegates, a Commiſſion of Review was granted. *Ibid.* 7. Revocation.

D **A Will** not to be eſtabliſhed againſt an Heir at Law, with a Trial at Law. *Ibid.* 90. Heir at Law.

E **A Will** not atteſted by three Witneſſes, is void as to Lands, but may be good to convey a Term of Years. *Ibid.* 124, 125. Void as to Lands, good as to a Term.

F **Contradictory** Clauſes in a Will are to be ſo expounded, as that the whole may conſiſt. *Ibid.* 154. Expoſition of Clauſes.

Withernam.

See **Homine Replegiando.**

G **Withernam is a Taking or Repriſal of other Cattle or Goods in lieu of them that were formerly unjuſtly taken and eſloined, or elſe with-holden.** See 2 Inſt. 140. Withernam, what.

H **Where** a Replevin is brought for the unjuſt Taking, and upon a Verdict or Judgment againſt the Avowant it appears to be ſo, and thereupon there is a Judgment to have a Return, and a *Retorno Habendo* is iſſued out to the Sheriff thereupon, to make a Return of the Cattle; and the Sheriff thereupon returns an *Averia elongata*, viz. That the Plaintiff hath conveyed away the Cattle to ſuch Places where he cannot find them; then there goes out upon that Return a *Capias in Withernam* of Cattle of the Defendant's to the Value of the Cattle taken by the Plaintiff. Where a Withernam is ſued out.

For it is but juſt that the Party ſhould have the Plaintiff's own Cattle in lieu of thoſe of the Defendant's unjuſtly taken, and eſloined by him.

Where Cattle *ad Valentiam* are taken, how to be underſtood.

A **Cattle** which are taken in Withernam *ad Valentiam*, that is, to the Value of the Cattle that were firſt taken, and ſo detained, that the Sheriff cannot execute the Replevin brought for them, is to be underſtood not of the Number of the Cattle firſt diſtreined, but according to their full Worth and Value: For elſe he that brings the Replevin and Withernam will be deprived of his Satiſfaction, which he ought to have in Caſe the Diſtreſs was not lawfully taken.

Where Cattle taken in Withernam may be delivered back.

B **I have** known that where Cattle have been taken in Withernam, they have been by a Rule of Court delivered back to the Owner upon his Payment to the Plaintiff of all his Damages, Coſts and Expences. See for this, 2 *Inſt.* 341.

Cattle taken in Withernam may be milk'd or work'd.

C **Altho'** Cows diſtreined could not be milk'd, nor Horſes diſtreined work'd, but ought to be put in a Pound overt where the Owner may milk or feed them, yet if Cows be taken in Withernam, the Plaintiff may milk, or if Oxen, work them reaſonably; becauſe they are delivered to him as his own Cattle. 1 *Leon.* 302. See Title **Replevin.** See *Cro. Eliz.* 162. *pl.* 1.

Where a Withernam was ſtop'd upon Payment of the Fine, Damages and Coſts.

D **Upon** an Avowry for Damage Feaſant it was found for the Avowant, and Damages aſſeſſed, and upon the *Retorno Habendo* the Sheriff returned *Averia elongata*, thereupon a Withernam was awarded, then came the Plaintiff and tendred in Court the Damages aſſeſs'd by the Jury, and prayed a Stay of the Withernam, but the Court would not grant it, becauſe he muſt firſt pay a Fine for eſloining of the Cattle, it being a Contempt, which together with the Damages and Coſts being paid, he had his Prayer. 2 *Leon.* Caſe 211. *Note*, The Fine was 3*s.* 4d. See Title **Replevin.** See *Cro. Eliz.* 162. *pl.* 1.

Witneſs.

See { Corporation. Evidence. Examination. Privilege. Wills.

A **A Witneſs is an indifferent Perſon to each Party, and not concerned in the Cauſe, and is ſworn to give in Evidence the Truth, the whole Truth, and nothing but the Truth: If he gains or loſes by the Cauſe, he ſhall not be ſworn to give Evidence.**

Witneſs, what.

B The Teſtimony of one ſingle Perſon is a ſufficient Teſtimony for the King in all Cauſes wherein he is concerned, except in Caſes of High Treaſon only, for there muſt be two Witneſſes to one and the ſame Fact; but in all other criminal Matters one good Witneſs is ſufficient. *Mich.* 23 *Car. B. R.*

One Witneſs is ſufficient for the King, except in High Treaſon.

C If divers Perſons be made Parties to a Suit, and ſome of them are either found Not guilty, or elſe the Plaintiff will give no Evidence againſt them, they may be allowed to be examined as Witneſſes in the Cauſe whereunto they were made Parties. (*Mich.* 22 *Car. B. R.*) For now it appears they are not concerned in the Suit, but are as Strangers and indifferent Perſons, and that the Plaintiff had no juſt Cauſe of Action againſt them, but it may be, made them Parties to take away their Teſtimony; and if they ſhould not be admitted to be good Witneſſes, the Plaintiff might deprive the Defendant of all his Witneſſes by making them Parties.

In what Caſes Parties to a Suit may be examined as Witneſſes.

D He that will make Uſe of Witneſſes at a Trial, muſt get them thither at his own Peril, and he ſhall not delay the other Party for lack of his Witneſſes. (*Paſch.* 23 *Car. B. R.*) For he hath Remedy

One of the Parties ſhall not delay the other for want of Witneſſes.

againſt

againſt his Witneſſes, if he ſuffer in his Trial by reaſon of their Abſence, by bringing an Action of the Caſe upon the Statute of Queen *Elizabeth* againſt them for not appearing.

Executor may not be a Witneſs to prove the Will that makes him ſo.

A **One** that is made Executor of a Will, is not to be allowed as a Witneſs to prove that Will. (*Paſch.* 23 *Car. B. R.*) For his own Intereſt may be concerned in the Proof of the Will, in reſpect of the Surpluſage of the Teſtator's Eſtate which the Law caſts upon him after the Debts and Legacies of the Teſtator's be paid, if there be any ſuch Surpluſage.

Court will grant an *Habeas Corpus* for a Priſoner in Execution to be examined as a Witneſs.

B **The** Court will upon a Motion grant an *Habeas Corpus* to have a Priſoner in Priſon upon an Execution in the King's Bench Priſon, to be at a Trial to be examined as a Witneſs, if the Trial be in *London*; but he that obtains the *Habeas Corpus* muſt carry him thither, and bring him back at his own Charge and Peril, that he make no Eſcape. *Trin.* 1650. *B. S.* 29 *June*.

Interrogatory of a ſick Witneſs may be read in Evidence at the Trial.

C **If** a Witneſs be ſick, ſo that he cannot be at a Trial, and it is ſo proved by Affidavit, and that Witneſs hath been formerly examined upon Interrogatories in the Chancery in that Matter upon which he is to be examined upon at the Trial, the Interrogatory may be admitted to be read in Evidence to the Jury at the Trial. (1652. *B. S.*) That the Party may not have Cauſe to complain that he wanted his Evidence.

One burnt in the Hand and pardoned may be admitted a Witneſs.

D **One** that hath been burnt in the Hand for a Felony committed by him, and is pardoned for the Felony, may be admitted a Witneſs in a Cauſe. By *Rolle* Chief Juſtice, 1652. *B. S.* For by the Pardon his Offences are pardoned, and he is made *rectus in Curia*; for the Pardon doth pardon as well the Offence itſelf, as the Guilt itſelf; but a Perſon who ſtands convicted of Treaſon or Felony cannot until ſuch Conviction is taken away either by a Pardon, or reverſing of the Judgment againſt him, be admitted to be an Evidence in any Court.

In what Caſe the Teſtimony of one made Defendant in a Suit is good Evidence.

E **In** the Caſe of one *Williams* and *Pues*, *Paſch.* 1656. *B. S.* Upon a Motion it was ſaid by *Glyn* Chief Juſtice, that one whom the Plaintiff makes a Defendant in the Suit, on purpoſe to take away his Teſtimony, may be examined as a Witneſs in that Cauſe, *de bene eſſe*; and if the Plaintiff do prove no Cauſe of Action againſt him, his Teſtimony is to be allowed for good Evidence in the Cauſe.

Carrier robbed is a good Witneſs to prove the Robbery.

F **Upon** Evidence given at a Trial at the Bar between *Warren* a common Carrier, and the Hundred of *Broadwater*, upon the Statute of *Wincheſter*, of Hue and Cry; it was ſaid by *Glyn* Chief Juſtice, That a Carrier who is robbed, may be examined as a Witneſs at the Trial touching that Robbery, to prove the Robbery, and what he was robbed of, otherwiſe the Truth cannot be known: So alſo may the Party himſelf who is Plaintiff, and brings the Action: But he ſaid, That this is the only Caſe where one

So may the Plaintiff.

may be admitted to give his Teſtimony as a Witneſs in a Matter which concerns himſelf; and in this Caſe the Carrier was examined accordingly. *Note, Mich.* 1656. *B. S.* For if the Law ſhould not be ſo, that Action would ſignify very little, for Perſons are robbed oftentimes when they are alone, or in the Company of Strangers, ſo that without the Oath of the Party robbed, it could very ſeldom come to be certainly known what, or how much a Man was robb'd of; but when a Man travels alone, and is robb'd of a Sum of Money, it will, if he brings his Action againſt the Hundred, concern him very much to have good Evidence to prove what Money or other Things he carried out with him when he was robbed; otherwiſe it will be a hard Matter for him to recover, becauſe the Hundreds have been often put upon with ſham Robberies, and have ſometimes detected them.

A **In** the Caſe of *Meredith* againſt the Hundred of *Warlington* in *Surrey, Paſch.* 1657. It was ſaid by *Glyn* Chief Juſtice, That a Pariſhioner is not a competent Witneſs to prove the Bounds of a Pariſh where he is an Inhabitant, although he pay neither Scot nor Lot, but receives Alms of a Pariſh, becauſe he is ſubject to watch and ward, and ſo is concerned ſomething, though not ſo much as others of greater Abilities.

Pariſhioner no good Witneſs to prove the Bounds of the Pariſh.

B **One** who laid a Wager, when he admits his Wager is loſt, and pays it, may be a Witneſs in the Cauſe.

A Witneſs who lays a Wager, when he admits it to be loſt, may be a Witneſs in the Cauſe.

C **No** Clerk of the Aſſizes, Clerk of the Peace, or other Perſon, ſhall demand, take or receive any Fee or Reward of any Perſon who ſhall be bound to give Evidence againſt a Traitor or Felon for the Diſcharge of his Recognizance; nor demand or take more than 2 *s.* for drawing of the Bill, upon Forfeiture of 5 *l.* and Coſts of Suit. 10 & 11 *W.* 3. *cap.* 23. *ſect.* 7.

No Fee for the diſcharging of a Recognizance for a Witneſs's appearing.

Not more than 2 *s.* for drawing of the Bill.

Forfeiture of 5 *l.* 10 & 11 W. 3. cap. 23.

D **Altho'** Judgment of the Pillory infers Infamy at the Common Law, yet by the Canon and Civil Law it will not import any Infamy, unleſs the Cauſe for which he was convicted was infamous; and he ſhall be a good Witneſs to prove a Will, unleſs convicted for any infamous Act. 3 *Lev.* 426, 427.

Who may be a good Witneſs by the Civil Law, but not by the Common Law.

E **The** Counſel cannot in the Examination queſtion his whole Life, as that he is a Drunkard, or an Whoremaſter, &c. but if he hath done ſuch a notorious Fact, which is juſt Exception againſt him, then he may be excepted againſt. *March* 83. *pl.* 130.

What is a good Exception againſt a Witneſs, and what not.

F **A Man** infamous by ſtanding in the Pillory, &c. may be a Witneſs when pardoned. 5 *Mod.* 16.

When a pillory'd Perſon may be a Witneſs.

G **But** one that hath had an infamous Judgment, cannot be a Witneſs. 74, 75.

And when not.

A good Witneſs upon a Trial at Law ſhall be a good Witneſs to prove a nuncupative Will. 4 & 5 **Ann.**

A **By** the Statute of 4 & 5 *Anne*, it is enacted, That all ſuch Witneſſes as are or ought to be good Witneſſes upon Trials at Law, ſhall be good Witneſſes to prove a nuncupative Will, or any Thing relating thereunto.

A Bail in the Action cannot be a Witneſs at the Trial.

B **One** who is Bail to an Action cannot be a Witneſs for the Defendant; becauſe being Bail, he is a Party concerned himſelf, and in ſwearing to diſcharge the Defendant, diſcharges himſelf.

Where the Evidence of a ſick Perſon, *&c.* taken before a Judge, ſhall be allowed.

C **A Witneſs**, who by reaſon of Sickneſs, extream Age, or other Cauſe, cannot come to a Trial, may by Order of Court be examined in the Country, before any Judge of the Court where the Cauſe depends, in the Preſence of the Attorneys of each Side; and the Teſtimony ſo taken ſhall be allowed to be given in Evidence at the Trial.

What Remedy againſt a Witneſs who doth not come to give Evidence in Civil Cauſes. 5 **Eliz. cap. 9. ſect. 12.**

If a Witneſs be ſerved with the Proceſs of any of the Courts of Record, to give his Teſtimony concerning any Matter depending in ſuch Court, and having tendred to him according to his Calling ſuch reaſonable Sum of Money for his Coſts and Charges, as having Regard to the Diſtance of the Places is neceſſary to be allowed, doth not according to the Tenor of the Proceſs, having no lawful and reaſonable Impediment, appear in Court to give his Evidence: If it be in a Civil Cauſe, the Party may have his Action upon the Statute of 5 *Eliz. cap.* 9. *ſect.* 12. to recover 10*l.* together with ſuch further Recompence to the Party grieved, as by the Diſcretion of the Judge of the Court out of which the Proceſs iſſued, ſhall be awarded according to the Loſs and Hindrance ſuſtained by the Party who procured ſuch Proceſs.

How to lay the Declaration in an Action upon this Statute, and what Evidence will do. 5 **Eliz. cap. 9. Sect. 12.**

In an Action upon this Statute it is ſaid, That the Plaintiff ſhewed the *Subpœna* to the Defendant, and left one Shilling towards her Charges, and promiſed that if ſhe came, ſhe ſhould have as much as ſhe deſerved; and alſo left a Note with her of the Day and Place of the Appearance: Then he ſays, that ſhe accepted the Shilling, and did not come; and moved, That it was not averr'd that one Shilling was ſufficient for her, but ſhe having accepted it, it is well enough. Another Exception, That he did not leave the Writ with her. *Curia.* That need not. The laſt Exception, That ſhe did not ſay, that by reaſon of her not appearing, the Verdict paſs'd againſt her, or that ſhe was forc'd to be nonſuited, and for this Exception the Judgment was ſtayed. *Cro. Car.* 522. 540. See 5 *Mod.* 355. *Maddiſon verſus Shore*, a Caſe to the ſame Purpoſe. See Title **Coſts and Damages.**

And what Remedy in Criminal Cauſes.

But if it be in a Criminal Cauſe, then the Court, if they think fit, may grant an Attachment.

Action lies againſt Baron for Non-appearance of Feme upon a *Supbœna.*

D **Where** a Feme Covert is *ſubpœna'd* to give Evidence, and having her Charges tendred, doth not appear, an Action lies againſt her Huſband and her upon this Statute. 1 *Leon.* 112. Caſe 116. See Title **Baron and Feme.**

A **A Witneſs** that is to teſtify on the Behalf of the King againſt one that is arraigned for Felony, muſt be ſworn for the King; ſo alſo now one who is to give Evidence for the Priſoner againſt the King upon any Trial for Treaſon or Felony, ſhall take an Oath to depoſe the Truth; and if convicted of any wilful Perjury, ſhall ſuffer all the Puniſhments, Forfeitures and Diſabilities, as may be inflicted upon Perſons convicted of wilful Perjury. 1 *Annæ*, *Seſſ.* 2. *cap.* 9. *ſect.* 3.

Witneſſes are now ſworn to give Evidence for and againſt the King, for Treaſon, Felony, &c.

B **One** that had but a ſmall Legacy given unto him by a Will, (I think it was 20*s.* to buy a Ring) was not allowed to be a Witneſs to prove that Will, for that were to ſuffer one to ſwear for himſelf; and this was adjudged by the Delegates in *Serjeant's Inn*, *Fleet-ſtreet*, in the Year 1701. But he might have releaſed his Legacy, and that would have made him a good Witneſs.

A Legatee of 20*s.* cannot be a Witneſs to prove that Will.

C **By** the Statute of *Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3. All Wills whereby Lands are deviſed muſt be in Writing, and ſigned and ſealed by the Deviſor in the Preſence of three or more credible Witneſſes; which Perſons, who are Witneſſes, (the Statute ſays) muſt ſet their Names thereunto as Witneſſes in the Preſence of the Party who made the Will, otherwiſe it is void.

There muſt be three Witneſſes to a Will for Lands.
29 Car. 2. cap. 3.

D **It** was the Opinion of the Court of King's Bench upon a Trial at Bar by a *Buckinghamſhire* Jury, That where the Deviſor ſigned and ſealed the Will in one Room, and the Witneſſes ſet their Names to it in another Room, both which Rooms opened into each other, ſo that a Man might ſee in one Room what was done in the other, and the Deviſor might (if his Curtains were not drawn cloſe) ſee in one Room what was doing in the other; that this was a ſigning of the Witneſſes in the Preſence of the Party within the Intent of the Statute; but the Jury notwithſtanding gave a Verdict that it was a void Will.

Where the Deviſor ſigned in one Room, and the Witneſſes in another.

E **A Man** may be a credible Witneſs, that is, one of good Fame and Credit, and yet, by the Rules of Law he may not be a Witneſs in the Cauſe wherein he is produced to give his Teſtimony: For he may be for ſome By-reſpect not indifferent in that particular Cauſe, though otherwiſe accounted of good Credit and Repute.

A Man may be of good Fame, and not to be admitted to be a good Witneſs.

F **If** the Counſel on both Sides at a Trial cannot agree what Teſtimony a Witneſs examined in the Cauſe did give, the Court will examine him again, That all Things given in Evidence may be left clear, and without Diſpute to the Jury to conſider of.

Where the Court will examine a Witneſs over again.

G **Inhabitants** within a Corporation, if they be not free of the Corporation, may be admitted as Witneſſes for the Corporation, at a Trial which concerns the Corporation: For their Intereſt is no Way concerned, and Favour is not a good Exception againſt a Witneſs, although it be againſt a Juror, becauſe Teſtimony of a Witneſs

Inhabitants of a Corporation may be Witneſſes for it if they are not free.

is left to the Jury to credit or not to credit, as they ſhall find Cauſe, and ſo it is not binding to the Jury: But the Jury's Verdict, be it true or falſe, is binding to the Party, and therefore there is greater Caution to be uſed that they may be indifferent, and not partial.

Where a Witneſs ſhall not be compelled to anſwer upon a *Voire dire.*

A Witneſs may not be compelled to anſwer upon a *Voire dire*, touching a Treſpaſs done, for the doing whereof he may himſelf be liable to an Action: For *nemo tenetur prodere ſeipſum*, it being againſt the very Law of Nature, and therefore it ſeems the tendring of the Oath *ex officio* is not warrantable. A

Where a Counſel of the other Side may be examined.

One that is of Counſel in the Cauſe on one Side, may be examined as a Witneſs in it on the other Side, if he be ſerved with Proceſs to give his Teſtimony therein, ſo that what he is examined to is not to the Validity of an Aſſurance, or to any Matter that came to his Knowledge as Counſel in the Cauſe, but by ſome other Means: So likewiſe in the Caſe of an Attorney in the Cauſe; for if it did, then he may refuſe to be examined. For in the former Caſe he is enjoined by Law (which is to be preferred before his Client) to do it: But in the other Caſe, he is not in any wiſe to betray his Client's Cauſe, or any of his Secrets committed to him, to his Client's Prejudice. B

The Examinations of Witneſſes in Chancery not to be admitted while they are living.

The Examinations of Witneſſes which were taken *in perpetuam rei memoriam* ought not to be made Uſe of at a Trial, until the Witneſſes ſo examined be dead; for they were only examined for their Teſtimonies to be preſerved, and to be made Uſe of only in caſe they ſhould die before the Trial. C

One concerned in the Title of Lands in Queſtion cannot be Evidence, though no Party to the Suit.

One that is any Ways concerned in the ſame Title of Land in Queſtion may not be allowed as a Witneſs in the Cauſe, although he be no ways then a Party to the Suit; for his Teſtimony tends to the Corroboration of his own Title, and therefore ſhall not be preſumed to be indifferent. D

Nor he who claims any Benefit by a Deed.

One that claims any Benefit by a Deed may not be allowed a Witneſs to prove the Deed, in regard of his Intereſt. E

A Witneſs ought not to be examined before the Trial, but by Conſent of both Parties.

One that is to be a Witneſs at a Trial ought not to be examined before the Trial, but by Conſent of both Parties, and a Rule of Court for that Purpoſe; and it may be in ſuch Caſes where he cannot conveniently be had at the Trial. F

How to give the ſame Evidence which a dead Man gave.

If one who gave Evidence in a former Trial be dead, then upon Proof of his Death, any Perſon who heard him give Evidence, and obſerved it, ſhall be admitted to give the ſame Evidence as the deceaſed Party gave, provided it is between the ſame Parties: And it is very neceſſary where the Cauſe is of Concern, to take the Evidence in Writing. G

A **If** a Witneſs depoſeth falſly, but the Jury gives no Credit to it, nor give the Verdict againſt his Oath, although the Party grieved cannot ſue him, he may be indicted for it. 2 *Leon. Caſe* 262.

Where a Witneſs may be indicted of Perjury, though the Jury do not believe him.

B **A Witneſs** who is ſworn to give Evidence for the King, may, if he ſwears falſly, be indicted at the Common Law, but not upon the Statute of 5 *Eliz. cap.* 9.

A Witneſs for the King may be indicted of Perjury at the Common Law.

5 Eliz. cap. 9.

C **What** is Perjury, and what not; very well argued on both Sides, from 343 to 348.

What is Perjury, and what not.

D **See** the Act of 5 *Eliz. cap.* 9. entituled, *An Act for the Puniſhment of ſuch Perſons as ſhall commit wilful and corrupt Perjury.* This was temporary; but afterwards by 29 *Eliz. cap.* 3. and alſo 21 *Jac.* 1. *cap.* 28. made perpetual.

The Puniſhment of Perjury.

5 Eliz. cap. 9.
29 Eliz. cap. 5.
21 Jac. 1. cap. 28.

E **Witneſſes** may be examined by a Judge to preſerve their Evidence. *Comb.* 63.

How to be examined.

F **One** convicted of Perjury, tho' pardoned, cannot be a Witneſs. 3 *Salk.* 155.

Who may be a Witneſs.

G **One** who may be a Loſer by the Deed or Gainer by the Verdict, can't be a Witneſs on an Indictment againſt another for Forgery. *Ibid.* 172.

The like.

H **Where** Perjury, *&c.* may be given in Evidence to the Credit of a Witneſs. *Salk.* 514, 689.

Perjury given in Evidence.

I **'Tis** the Nature of the Crime and the Conviction, not the Puniſhment that makes a Witneſs infamous. *Ibid.* 690.

What makes a Witneſs infamous.

K **Yet** *quære* whether the Infamy ariſes from the Crime, or the Judgment of the Pillory. *Ibid.* 689.

The like.

L **For** the King may pardon a Diſability where 'tis only the Conſequence of the Judgment. *Ibid.* 514, 689.

Pardon.

M **But** not where 'tis part of the Judgment; yet an Act of Pardon will. *Ibid.*

Act of Pardon.

N **A Priſoner** having eſcaped may be a Witneſs to prove the Eſcape voluntary, on a Traverſe of an Inquiſition againſt the Gaoler. *Ibid.* 690.

Priſoner to prove an Eſcape.

O **The** Depoſition of a Witneſs examined before a Judge becauſe going beyond Sea, cannot be read if he be in *England.* *Ibid.* 691.

A Witneſs examined before a Judge.

P **Nor** can Commiſſioners of Appeals proceed upon Depoſitions taken before Commiſſioners of Exciſe, but muſt examine the Witneſſes again *de novo* unleſs dead. *Salk.* 555.

Commiſſioners of Exciſe.

Q **A Prohibition** granted to ſtay a Suit for a Legacy for refuſing Proof of Payment by one Witneſs, *aliter* in Probate of Wills, *&c. Ibid.* 547. *Carth.* 142.

One Witneſs to prove Payment.

Legatee.

Note, a Legatee may be a Witneſs againſt a Will, but not forfeit it. *Salk.* 691. A

Witneſſes examined upon a *Voire dire*.

An Objection to a Witneſs that was to get by the Event of the Cauſe anſwered. *Vide Mod. Caſes in Law and Equity*, 69. B

Eſtreat of a Recognizance ſtayed.

The eſtreating of a Recognizance was ſtayed, for that the Defendant could not get his Witneſſes, being Six, at the Trial. *Ibid.* 288. C

Verdict ſet aſide.

So a Verdict on an Indictment of Perjury was ſet aſide on an Affidavit made that he could not get his Witneſſes ready. *Ibid.* 289. D

Witneſſes denied to be examined before a Judge.

The Plaintiff moved to have Witneſſes (Seamen going a long Voyage) examined at a Judge's Chamber; but denied, becauſe he might have brought on the Trial when he pleaſed. *Ibid.* 325. E

Plaintiff examine Witneſſes.

But if the Defendant had deſired a Favour of the Court, it would be granted, without he would admit the Plaintiff to examine thoſe Witneſſes. *Ibid.* 326. F

Words.

See
- Actions.
- Expoſition.
- Slander.
- Trover.

What this Title *Words* is.

By the Word Words here, Scandalous and Defamatory Words which touch a Man in his Reputation, Trade and Livelihood, are intended, for the ſpeaking whereof an Action well lies if they do appear to be actionable. G

A **Altho'** Words were not actionable in themſelves at the Time of the ſpeaking of them, yet if an Action be brought for the ſpeaking of them, they may be made actionable by the Defendant's pleading, by juſtifying of the Words. (*Mich.* 22 *Car. B. R.*) For it may be, that in ſuch his Juſtification he may explain in what Senſe he ſpoke them, which did not appear plainly before: And where Words are ambiguous, the beſt Senſe ſhall generally be taken.

Words not actionable at the Time of ſpeaking, may be made actionable by the Defendant's Pleading.

B **If** the Words import Scandal in themſelves, by which Damage may accrue, then they will bear Action without Damage, otherwiſe not. *March* 115. So where they draw a Man's Life or good Name in Queſtion. *Cro. Jac.* 531.

When Words are actionable, and when not.

Where they draw a Man's Life or Name in Queſtion.

C **I** *will queſtion him for poiſoning my Aunt*; and he did not aver that ſhe was poiſoned, adjudged actionable; for the Words are direct Slander: And as to the Want of the Averment, it is good without it; for thereby his Credit is impeach'd, although he never did the Fact. *Cro. Eliz.* 569. *pl.* 3. See Title **Slander.**

Words of poiſoning, and did not aver that the Party was poiſoned, yet Action lies.

D *Thou haſt killed thy Wife*; and did not aver that his Wife was dead. *Curia.* It ſhall be intended, if the contrary be not ſhewn by the Defendant. *Cro. Eliz.* 823. *pl.* 24.

Thou haſt killed thy Wife, lies *ſans* Averment that ſhe is dead.

E **Where** Articles are exhibited to a Juſtice of the Peace, comprehending divers great Miſdemeanors, to the Intent to bind the Party to his Good-Behaviour, the Party accuſed ſhall not have his Action for any Matter in thoſe Articles; becauſe the Party hath purſued the ordinary Courſe of Juſtice. 4 *Rep.* 14. *b.* 15. *a.*

Articles exhibited to a Juſtice, the Party accuſed ſhall not have his Action.

F **Caſe** for Words ſpoken of a Juſtice of the Peace and a Deputy-Lieutenant; and the Verdict found that he was a Juſtice of the Peace, but no Deputy-Lieutenant, and yet good, the Words being actionable. 3 *Lev.* 50. 4 *Rep.* 5, 16. *a.*

Words ſaid to be ſpoken of a Juſtice of the Peace and Deputy-Lieutenant; the Verdict found him only a Juſtice, and good; why.

G **The** Words *Son of a Whore* are ſuable only in the Spiritual Court, and there by Mother and Son. 3 *Lev.* 119, 137. *Salk.* 692.

Son of a Whore is ſuable in the Spiritual Court, by both Mother and Son.

H **The** Word *Whore* lies not in our Law, for our Law cannot try whether a Woman be a Whore or no; but it is the Spiritual Court muſt do it. *Cro. Eliz.* 787. *pl.* 27.

The Word *Whore* is not actionable, and why.

I **You** kill'd *A. B. innuendo A. B. modo defunct*; the *modo defunct* extends only to the Time of the Action, not to the Time of ſpeaking the Words. *Cro. Jac.* 215. *pl.* 12.

You kill'd *A. B. modo defunct.* the *modo defunct.* refers to the Time of the Action, not of the ſpeaking the Words, and ſo naught.

Thou art forſworn before a Juſtice of the Peace, is actionable.

A *Thou art forſworn before a Juſtice of the Peace,* are actionable Words; but, *Thou art forſworn before J. S.* innuendo, *a Juſtice of the Peace,* is not. 3 *Lev.* 166. 4 *Rep.* 15. *a, b.*

How to declare for Words ſpoken of a Juſtice.

B **How** to declare for Words ſpoken of a Juſtice of Peace. *Cro. Car.* 223.

Scandalous Words will not lie of a Virgin, unleſs actionable in themſelves, or there be Loſs of Marriage.

C **Scandalous** Words ſpoken of a Virgin will not lie, unleſs in themſelves actionable, or Loſs of Marriage with ſome particular Perſon alledged in the Count. *Lutw.* 1296. *Cro. Eliz.* 787. *pl.* 27.

Words ſpoken of a Man whereby he loſt his Marriage: So alſo where a Woman loſes her Marriage.

D **Words** ſpoken of a Man whereby he loſt his Marriage; the Words are, *Hath that Baſtard* Bryan *cauſed you to be arreſted?* Adjudged actionable. *Cro. Jac.* 422. *pl.* 3. *Latch* 218. It lies alſo where a Woman loſes her Marriage. *Anne Davis*'s *Caſe,* 4 *Rep.* 16.

Words ſpoken by Interrogation actionable.

E **Words** ſpoken by Interrogation as actionable as if ſpoken affirmatively. *Cro. Jac.* 568. *pl.* 5.

Where Words are ſpoken at one Time, and where at ſeveral, and entire Damages, how to be, if ſome are not actionable.

F **When** Words are all ſpoken at one Time, and ſome are actionable, and ſome not; there Damages ſhall be intended to be given for thoſe which are actionable: But if ſpoken at ſeveral Times, and the firſt be actionable, and the others not, and the Defendant is found guilty, and entire Damages given, there the Plaintiff ſhall not have Judgment. *Cro. Car.* 327. *pl.* 11, 328.

Of an Attorney, *You are a corrupt Man, and deal corruptly;* lies.

G **Theſe** Words ſpoken of an Attorney, *viz. You are well known to be a corrupt Man, and to deal corruptly,* held actionable. 4 *Rep.* 16. *a.*

Action lies not for ſaying of one, That he was detected of Perjury.

H **The** Plaintiff ſaid, That the Defendant was detected of Perjury in the Star-Chamber. An Action lies not; for an honeſt Man may be detected, but not convicted. 4 *Rep.* 16.

Action for ſaying, *Thou killedſt thy Wife:* Plaintiff ſets forth he had a Wife living. No Action lies.

I **The** Plaintiff ſets forth, That he hath a Wife living; and that the Defendant ſaid of the Plaintiff, *Thou killedſt thy Wife:* No Action lies, becauſe by the Plaintiff's own ſhewing, his Wife is living. And if the Words had been, That *he had murdered his Wife,* no Action would have lain, for it appears that ſhe was not murdered. 4 *Rep.* 16. *a.*

Where there are more Words in the Declaration than the Defendant ſpoke, yet it ſhall not hurt the Declaration.

K **Tho'** the Plaintiff declares for more Words than the Defendant ſpoke, yet if it appears upon the Evidence that he ſpoke thoſe Words which are actionable, and the Words added diminiſh not, nor are any Alteration of the Senſe of thoſe Words whereof he declares, the Plaintiff ſhall have his Judgment. *Cro. Jac.* 407. *pl.* 4.

A *He, Innuendo the Plaintiff, is a Traytor:* Adjudg'd actionable, although there was no Communication about him. *Cro. Jac.* 673. *pl.* 7. 674.

Where *Innuendo* without any Communication will do.

B *Thy Father is a Thief, Innuendo* the Plaintiff, and not alledged to be ſpoken to the Son, nor in his Preſence, the *Innuendo* helps not: Adjudged *pro* Defendant. *Cro. Car.* 92. *pl.* 16.

Where an *Innuendo* helps not.

C Where Words are laid to be ſpoken faſly of the Plaintiff, that is ſufficient, without ſaying there was any *Colloquium* of him. *Cro. Car.* 378. *pl.* 4.

Where the Action will hold without a *colloquium*.

D The Purpoſe and Intent of a Man without an Act, is not puniſhable by the Law. 4 *Rep.* 16. *b.*

The Intent without an Act is not puniſhable.

E *Firſt*, In all Actions on the Caſe for Words, the Perſon ſcandalized muſt be certain.

Some general Rules to be obſerved in Actions for Words.

F *Secondly*, The Scandal muſt be apparent by the Words themſelves; and therefore if one ſays *ſans* precedent Communication, That one of the Servants of *J. S.* is a Thief; here for the Incertainty of the Perſon no Action lies, and an *Innuendo* cannot make this certain, which was uncertain before. For the Office of an *Innuendo* is to aſcertain the ſame Perſon which was named certainly before, and in Effect ſtands but in the Place of a *prædict'*; but cannot make a Perſon certain, who was incertain before. 4 *Rep.* 17. *b.* 20. *a.*

Where an *Innuendo* cannot make a Thing certain.

What the Office of it is.

G That which comes under or after the *Innuendo* is not an expreſs Averment, nor iſſuable. *Cro. Car.* 443.

What comes under or after the *Innuendo* is not expreſs Averment, nor iſſuable.

H There is a Difference where the Words of themſelves import apparent Incertainty, and when they may be aſcertained by Intendment: In the firſt Caſe no Averment will aid it; but in the laſt Place, by the Averment and Verdict it may be aided. *Cro. Jac.* 107. *pl.* 2.

Where an Averment and Verdict may help the Uncertainty of Words.

I *Thou art as arrant a Thief as any is in* England; and he did not aver that there were Thieves in *England*, and for that Reaſon held not to be actionable. *Cro. Jac.* 687. *pl.* 2. See *Cro. Car.* 40. *pl.* 1.

As arrant a Thief as any is in England, is naught without an Averment.

K An Action brought in *London* for the Word *Whore*, not encouraged. 4 *Rep.* 18. *a.*

Action for the Word *Whore* in *London*.

L In an Action of Slander of Title, if the Defendant affirms and publiſhes, that the Plaintiff had no Right, but that he himſelf had; here, becauſe the Defendant pretends a Title, though he hath none, no Action lies: For if an Action would lie, how could a Man go to Counſel, or commence a Suit, without ſubjecting of himſelf to an Action? 4 *Rep.* 18. *a.* 1 *Rep.* 175.

For Slander of a Title.

Where the Words, *You are a Knave,* are actionable, and where not.

A The Words, *You are a Knave,* ſpoken generally, will not bear an Action; but if one call another *Knave,* and apply the Words particularly to the Profeſſion of him againſt whom they are ſpoken, as to call an Attorney at Law, *Knave,* and to apply it ſpecially to him in Relation to his Practice as an Attorney, an Action on the Caſe will lie for the ſpeaking of them. (*Hill.* 22 *Car. B.R.*) For by the Application of them they import a ſpecial Damage done to the Party by the ſpeaking of them, in ſlandering him in his Profeſſion, and leſſening of his Practice.

A perjur'd Knave, tho' Adjective Words, actionable.

When Adjective Words are actionable, and when not.

B The Words, *Thou art a perjur'd Knave,* are actionable, though they are Adjective Words. For ſometimes Adjective Words are actionable, and ſometimes not. *Firſt,* When the Adjective preſumes the Fact committed. *Secondly,* When they ſcandalize one in his Office or Trade. 4 *Rep.* 19. *Cro. Jac.* 65. *pl.* 5. 166, 205.

Bankrupt Knave, being two Subſtantives, are actionable, not if they were *bankruptly Knave,* or adjectively ſpoken.

C *Thou art a Bankrupt Knave,* being two Subſtantives, are actionable; but if they had been *bankruptly Knave,* or adjectively ſpoken, they had not. *Cro. Jac.* 345. *pl.* 13.

Adjective Words are not ſo ſtrong as abſolute Words.

D Adjective Words are not ſo ſtrong as abſolute Words. *Cro. Jac.* 499. *pl.* 7.

Cheating Knave, which touch a Man in his Profeſſion, is actionable.

E To call a Man a *cheating Knave,* which touch him in his Profeſſion and Means of getting his Living, is actionable. *Cro. Jac.* 504. *pl.* 15.

You are a Cheat, not actionable, it not being alledged to touch him in his Trade.

F Words ſpoken of a Tradeſman, *You are a Cheat, and I will prove you a Cheat for many Years:* Adjudged, That theſe are Words of Heat, and not actionable, having not alledged, that the Cheat was in any Thing belonging to his Trade. 5 *Mod.* 398.

Bankrupt Rogue is actionable, and why.

He muſt lay in his Declaration, that he uſed buying and ſelling at the Time of the Words.

G *He is a Bankrupt Rogue,* adjudged actionable; the Addition of Rogue to Bankrupt doth not extenuate, but aggravate it. *Cro. Car.* 31. *pl.* 1. *Note,* The Plaintiff ought to lay in his Declaration, That he was a Trader, and uſed buying and ſelling at the Time of ſpeaking the Words. *Cro. Car.* 282. *pl.* 23.

In what Senſe Words ought to be taken.

H Words ought to be taken in ſuch Senſe as they are ſpoken, and according to the common Speech. *Cro. Car.* 382. *pl.* 11.

I Upon diſcloſing of the whole Matter, Words will be actionable, which otherwiſe would not. 4 *Rep.* 19. And ſee Lord *Cromwell's* Caſe.

A **Defamations** in the Spiritual Court ought to have three Incidents:

The three Incidents which Defamations in the Spiritual Court ought to have.

B *Firſt*, **That** it concerns Matter meerly Spiritual and determinable in that Court, as Adultery, *&c.*

C *Secondly*, **It** ought to concern meerly Spiritual Matter only. For if it concern Matter alſo determinable at the Common Law, the Spiritual Court hath no Conuſance of it.

D *Thirdly*, **Altho'** the Defamation be ſolely Spiritual, yet the Plaintiff there ſhall recover no Damages nor Amends; but the Suit muſt be for puniſhing the Offence *pro ſalute animæ*.

E **Where** the Defendant, in Caſe of Defamation, is put to a corporal Puniſhment: If he will redeem his Penance, and agree to pay the Party damnified a certain Sum of Money, the Party damnified ſhall have a Suit for this in the Spiritual Court. 4 *Rep.* 20.

If any Man be condemn'd to corporal Puniſhment in the Spiritual Court, he may redeem this for Money.

F **An** Action was brought for Words, *quorum tenor ſequitur in hæc verba*; this is no expreſs Allegation of the ſpeaking of the Words, and therefore naught. *Cro. Eliz.* 857. *pl.* 24.

A Declaration for Words, *quorum tenor ſequitur, &c.* is naught.

G **Where** Damages are found to be under 40 *s.* in an Action for Words, the Plaintiff ſhall recover no more Coſts than Damages. 21 *Jac. cap.* 16.

Where in an Action for Words, if Damages be under 40 *s.* the Plaintiff ſhall have no more Coſts than Damages. 21 **Jac. cap.** 16.

H **But** where it is for calling of him *Thief*, and cauſing of him to be indicted of Felony; there he ſhall have his full Coſts. *Cro. Car.* 163. *pl.* 5. 307. *pl.* 7.

Where he ſhall have his Coſts.

I **Words** ſueable in the Spiritual Court, *viz.* Whore-Maſter, Whore-Wittal, Brandy-Nos'd Whore. *Salk.* 692, 693.

Sueable in the Spiritual Court.

K **Words** not ſueable there, *viz.* impudent, brazen fac'd Beelzebub, or Devil, or Prince of Darkneſs, becauſe no Diſcredit. *Ibid.* 692.

What Words not ſo.

L **Alſo** Suit lies not in that Court for Words charging an Offence not puniſhable there. *Ibid.* 691.

M **As** ſaying of a Parſon, he has no Senſe, is a Dunce and a Blockhead, and deſerves to have his Gown pulled over his Ears. *Ibid.*

The like of a Parſon.

N **Nor** where Words of Spiritual Conuzance are coupled with others of a Temporal Crime. *Salk.* 552.

What Words not ſueable there.

What Words not ſueable there.

A **As** thou art a Whore and a Thief, or keepeſt a Bawdy-houſe; tho' Whore alone is ſueable there. *Salk.* 532. *Vide* 404.

What Court can't hold Plea.

B **The** Court of Honour can't hold Plea of ſcandalous Words. *Salk.* 553.

C **Words** importing any Charge of Incontinency, are ſueable there. *Ibid.* 693, 696.

What Words actionable of Officers.

D **In** Offices of Profit, Words imputing Want of Ability are actionable. *Ibid.* 695.

What not.

E **But** not in Offices of Honour, as calling a Juſtice of the Peace Aſs, or Beetle-headed Juſtice. *Ibid.*

What are.

F **There** goes your rare Chancellor to ſuborn Witneſſes to ſwear againſt the Parſon, actionable. *Per Holt, Sed Cur. Divid. Salk.* 696.

What Words actionable.

G **Words** ſubjecting a Man to Puniſhment may not be actionable unleſs ſcandalous. *Ibid.*

H **As,** Thou art one that ſtole my Lord's Deer, are not, nor Papiſt, but with reſpect to the Times. *Ibid.*

Fornication.

I **A Charge** of Fornication, *&c.* is not actionable, unleſs ſpecial Damages are laid. *Salk.* 693.

What not actionable.

K **Nor,** She is a Whore, and had a Baſtard by her Father's Apprentice. *Ibid.* 696.

Baſtard.

L **Nor,** She had a Baſtard, becauſe it don't appear to be chargeable to the Pariſh. *Ibid.* 694.

Cheat.

M **Nor,** You are a Cheat, ſpoken of a Tradeſman without laying a *Colloquium* of his Trade. *Ibid.* 693.

Of a Butcher.

N **Nor** of a Butcher, That the Cow died of Calving, tho' laid *per quod* he loſt his Cuſtomers. *Ibid.*

Words actionable.

O **But** to ſay, You ſtole my Box-wood, and I will prove it, is actionable. *Salk.* 695, 696.

P **So** to ſay of a Juſtice, and Deputy Lieutenant, Don't vote for him, for he is a Jacobite, and for bringing in the Pretender, *&c.* *Ibid.* 694, 695.

Clipping and Coining.

Q **To** ſay, *In Black Bull Yard you could procure broad Money for Gold, and clip it,* is actionable, becauſe it imports an Act done. *Ibid.* 697.

Words not indictable.

R **Words** of Slander ſpoken of a Mayor are not indictable, as, You are a Rogue and a Raſcal, *&c.* *aliter*, if written. *Ibid.*

S **But** they are good Cauſe to bind to their good Behaviour. *Ibid.*

Words, or Expoſition of Words.

See **Expoſition.**

A A *Latin* Word uſed in pleading, which Word doth ſignify divers Things, is nevertheleſs well uſed to expreſs that Thing which is intended to be expreſſed by it, if there be an *Anglice* joined with it. (*Hill.* 21 *Car. B. R.*) For by the Word *Anglice*, it is explained what the Party doth intend it ſhall ſignify in *Engliſh*; alſo if an Action be brought for a Thing for which no *Latin* Word ever was, yet by making a Word ſound near the *Latin* of the Thing in Queſtion, with an *Anglice* to it, ſhall be good enough; but if any *Latin* Word ſhall be found for the Thing in Queſtion, then the made *Latin* Word will make the Declaration or Plea naught.

A *Latin* Word that ſignifies divers Things, if an *Anglice* be joined to it, ſhall expreſs the Thing intended.

B **Words** which may be taken or interpreted in a general and common Senſe, ought not to receive a ſtrained and unuſual Conſtruction. (*Hill.* 21 *Car. B. R.*) For it is likely the Party that uſed them, had a plain and common Meaning in them, and not a ſtrained and unuſual Meaning, and therefore the Law will take them according to the common Parlance.

Words ought not to have a ſtrained Conſtruction.

C **Words** which are in themſelves uncertain, may nevertheleſs be made certain by ſubſequent or following Words. (*Mich.* 23 *Car. B. R.*) Which may ſerve as a Comment to explain what the Speaker did mean by them.

Uncertain Words may be made certain by the following.

D **A Word** which is written ſhort, or abbreviated without a Daſh, is not good. (*Hill.* 22 *Car. B. R.*) For the Daſh or turning up of a Stroke or Daſh with a Pen at the End of it, is the general Mark or Sign to diſtinguiſh an abbreviated Word from a Word written at length.

A Word abbreviated without a Daſh, not good.

E **Incertain** Words in the Count or Declaration may be made good and certain by a Plea in Bar. (*Hill.* 22 *Car. B. R.*) To wit, by the Defendant's taking Notice of the Meaning of them in his Plea; for if they be certain to the Defendant, they are certain enough.

How uncertain Words in the Count may be made certain.

The different placing of Words may cauſe them to have a different Senſe.

A **The** different placing of the ſame Words may cauſe them to have a different Senſe or Conſtruction. (*Paſch.* 23 *Car. B. R.*) And therefore Care is to be taken in pleading how the Words uſed are placed.

How the Words in a Will to be conſtrued.

B **The** Court ought ſo to order the Words of a Will, that they may receive ſuch a Conſtruction that may agree with Law, although by their miſplacing, they cannot in themſelves receive ſuch a Conſtruction. (*Paſch.* 23 *Car. B. R.*) *Ut res magis valeat quam pereat:* Alſo if a Will contradicts itſelf, the laſt Words in the Will ſhall always ſtand, for the laſt Words are his laſt Will.

Words in a Will may deſtroy a Condition precedent, or create a Condition ſubſequent.

C **Words** in a Will, as they may be diverſly penn'd, may either deſtroy a Condition precedent, or create a Condition ſubſequent where there was none before. *Paſch.* 23 *Car. B. R.* See **Will.**

Moorage of a Ship.

D **Moorage** of a Ship is when the Ship lies at Anchor within a Haven or Harbour, and it is called Moorage from the *Latin* Word *Morari, viz.* ſtaying in the Place. *Paſch.* 23 *Car. B. R.* Q.

Anſty of *York.*

E **The** Anſty of the City of *York,* is that Part of the County of the City which extends without the City, and is an Hundred, which is within the Juriſdiction of the City, and was added to it by Act of Parliament. *Paſch.* 23 *Car. B.R.* See the Statute.

To what the Word *Relaxavit* doth not amount.

F **The** Word *Relaxavit* doth not amount to a Surrender in the Caſe of a common Perſon, much leſs in the Caſe of the King. (*Trin.* 23 *Car. B. R.*) The Verb *Relaxare,* whereof the Word *Relaxavit* is the Preterperfect Tenſe, ſignifies only *to releaſe,* which differs much from a Surrender, as appears by *Littleton* in his *Tenures.*

How the Word *Intereſt* to be intended.

G **The** Word *Intereſt* for borrowing of Money muſt be intended ſix Pounds a Year *per Cent.* if the contrary be not ſhewed. (*Trin.* 23 *Car. B. R.*) Becauſe that is the Intereſt which the Statute allows every Perſon to take *impune.* *Note,* Intereſt is now reduced to 5 *l. per Cent.* by the Statute of 3 *Georgii.*

Of the Interpretation of the Words of a Statute.

H **The** Words of a Statute ought not to be ſo interpreted, that thereby natural Juſtice will be deſtroyed. (*Hill.* 23 *Car.*) For it is not the Intent of any particular Law of a Land or Nation, to deſtroy the general univerſal Law of Nature; and therefore ſuch a Conſtruction cannot be but contrary to the Intent of the Law-makers. See **Statute.**

Simul & and *ſimul cum.*

I **The** Word *ſimul* is not a Word copulative, when it is joined with the Word *Et.* (*Trin.* 24 *Car. B. R.*) But *ſimul cum* are Words copulative.

A *Latin* Word falſe engliſh'd ſhall ſtand.

K **Where** there is a *Latin* Word in a Declaration, which is falſly engliſh'd, the *Engliſh* Word ſhall be adjudged void, and the *Latin* Word ſhall ſtand.

(*Paſch.* 24 *Car. B. R.*) *Quære tamen*, For the Party that doth interpret it, knows beſt what he meant by it, and all Words are but to expreſs the Mind of him that ſpeaks them.

Where ſenſeleſs Words ſhall not hurt a Declaration.

A **Where** ſenſeleſs Words which ſignify nothing are uſed in a Declaration to expreſs Things, they ſhall be accounted void and idle, and ſhall not hurt the Declaration, if it be good without them; for no Damages ſhall be intended to be given by a Jury for thoſe Things which were intended to be expreſſed by thoſe ſenſeleſs Words, and are not expreſs'd, by reaſon of the Senſeleſneſs of them. *Paſch.* 24 *Car. B. R.*

Of the Word *videlicet*.

B **The** Word *videlicet* is uſed to explain the foregoing Words in the Deed, or other Writing where it is uſed; and if the Words which the *videlicet* doth uſher in, be contrary to the preceding Words, they are void. (*Paſch.* 24 *Car. B. R.*) For then they ceaſe to be an Interpreter, and become deſtructive, contrary to their Nature.

A Contract may be diſſolved by Parol.

C **One** may upon a Conſideration diſſolve by Parol an abſolute Contract. (*Paſch.* 24 *Car. B. R.*) *viz.* made by Parol.

One may give a Parol Authority to take Livery and Seiſin.

D **One** may give Authority by Parol unto another to take Livery and Seiſin for him. (*Mich.* 1650. *B. S.*) For he is but an Inſtrument or Conduit-pipe to derive the Poſſeſſion of the Land to another; and it is all one as if he took the Livery and Seiſin himſelf.

Ambiguous Words how to be conſtrued.

E **Words** ambiguous ought to receive ſuch a Conſtruction as may make them ſtand with Law and Equity. (*Mich.* 1650. *B. S.*) And not to be wreſted to do Wrong.

Of the Mark call'd a *Tract*.

F **A Mark** made in the Manner following, *viz.* (∧) which is to ſhew where a Clauſe or Word left out and interlined in Writing, ſhould come in, is called a *Tract*, by *Rolle* Chief Juſtice: It ſeems to be derived from the *Latin* Word *trahere* to draw, becauſe by it the Words left out are ſignified to be there where it is placed to be drawn into the Writing, 1650. *B. S.* It may be alſo called a *Direct* from the *Latin* Word *dirigere*.

Pro uno gallo fœni, &c. held good.

G **In** an Action of Trover *pro uno gallo fœni, anglice, a Cock of Hay*, upon a Motion in Arreſt of Judgment it was ſaid by the Chief Juſtice, that when Actions of Trover firſt came up, they were not encouraged, as not knowing what the Conſequence of them would be, and therefore Judgments were arreſted oftentimes upon very ſlight Occaſions; but by the Experience of the Benefit of them, and upon finding them to be remedial Actions, they are now encouraged by all Courts, and that he did not doubt but that the Jury who gave their Verdict were well ſatisfied in the Thing they gave their Verdict for, and thereupon he ordered Judgment to be entered for the Plaintiff; but withal ſaid, that the Clerk who drew that Declaration was an *Ignoramus*.

Wreck.

To whom Wrecks belonged by the Common Law.

12 Car. 2. cap. 4.

By the Common Law all Wrecks did belong to the King. *Vaugh.* 164. and therefore not chargeable with any Cuſtoms. *Vaugh.* 164. Nor by 12 *Car.* 2. *cap.* 4. or any other *Law. Ibid.* from *fol.* 165. to 172. A

The Releaſe of a Wreck by King *Richard* the Firſt, and alſo a new Grant of it again.

King *Richard* the Firſt, in the ſecond Year of his Reign, acquitted and diſcharged of Wreck, *totam terram ſuam citra mare & ultra*, appointing *quod omnis naufragus qui ad terram ejus vivus pervenerit, omnes res ſuas liberas & quietas habeat, ſi autem in nave mortuus fuerit, filii & filiæ fratres vel ſorores ejus habeant res ſecundum quod oſtendere poterunt ſe eſſe propinquiores illius hæredes.* And where there are no Sons, Daughters, Brothers nor Siſters, then the King ſhall have it. *Roger* of *Hovenden, pars poſterior* 386. *b.* B

What is a Wreck.

Nothing is *Wreccum Maris*, but ſuch Goods only as are caſt or left upon the Land by the Sea. 5 *Rep.* 106. And have no other Propietor but whom the Law makes, *viz.* the King, or Lord of the Manor; but they have not an abſolute Property till after a Year and a Day. *Vaugh.* 168. C

What ſhall be adjudged Wreck.

Weſtm. 1. 3 E. 1. cap. 4.

Where a Man, Dog or Cat eſcapes alive out of the Ship, neither the Ship, nor any Thing therein ſhall be adjudged Wreck. D

Flotſam, what.

Flotſam is when a Ship is ſunk or periſhed, and the Goods are floating upon the Sea. 5 *Rep.* 106. *b.* E

Jetſam, what.

Jetſam is when a Ship is in Danger of ſinking, the Mariners caſt the Goods into the Sea; and altho' ſhe periſh, yet none of theſe Goods are called Wreck ſo long as they remain in and upon the Sea; but if they are driven to Land by the Sea, they ſhall be called Wreck. *Ibid.* F

Lagan, or Ligan, what.

Lagan or Ligan is when Goods are thrown off from a Ship which is in Danger of ſinking, and there is a Buoy with a Rope fix'd to the Goods. *Ibid.* Goods derelicted may be Wreck. *Vaugh.* 168. G

No Wreck till caſt aſhore.

None of theſe are Wrecks ſo long as they remain at Sea; but if caſt on Shore, are all of them Wrecks. *Ibid.* Becauſe they are then *infra Corpus* H

Comitatus, and belong to the Lord of the Manor. *Ibid.* But when they are at Sea, they belong to the Admiral.

When to the Lord, and when to the Admiral.

A **The** Manner of pleading of a Wreck by Preſcription. 5 *Rep.* 106. *b.*

How to plead a Wreck.

B **The** Soil between the High and Low-Water Mark may be Parcel of a Subject's Manor. 5 *Rep.* 107. *a.*

Whoſe the Soil between the High and Low-Water Mark.

C **When** the Sea flows, *ad plenitudinem maris*, the Admiral ſhall have Juriſdiction of every Thing done upon the Water, between High and Low-Water Mark; but yet when the Sea flows back, then the Land may belong to a Subject, and every Thing done upon the Land, when the Sea is reflown, ſhall be tried at the Common Law. 5 *Rep.* 107. *a.* But *Quære* this Matter, Whether the Admiral ſhall have any Juriſdiction between High and Low-Water Mark, becauſe I take that to be *infra Corpus Comitatus.*

Where the Admiral hath Juriſdiction, and where the Common Law hath it.

D **In** what Caſes the Year and Day is given by the Common Law. 5 *Rep.* 107. *b.*

In what Caſes the Year and Day is given.

E **Wreck,** Waif and Stray may be claimed by Preſcription. 9 *Rep.* 28. *a.*

Wreck, Waif and Stray may be claimed by Preſcription.

Writ.

See { **Jeofails.**
Obligation.
Return of Writs.

F **WRit, which is in** French Brief, **and in** Latin Breve. Fitzherbert **in his Preface to his** Natura Brevium **ſays, That they are thoſe Foundations whereupon the whole Law doth depend; and certainly original Writs are ſo artificially and briefly compiled, that there is nothing redundant nor wanting in them.** Co. Litt. 73. b.

Of Writs.

G **A Writ** may be either a Mandatory Writ, or it may be a Remedial Writ; a Mandatory Writ is a Writ which is directed unto the Cinque-ports, or to ſome other privileged Place to enjoin them, not to exceed their Ju-

Writs are either Mandatory or Remedial.

riſdiction; but this not a Remedial Writ to the Party that obtains it, conducing any Ways to his obtaining of Right in his Cauſe depending there: For ſuch a Writ leaves them at large to do Juſtice, and is rather cautionary than injunctive. (*Trin.* 22 *Car.* *B. R.*) Tho' it may ſeem to imply ſomething to that Purpoſe.

When an Original is not amendable, and when it is.

An original Writ is not amendable, if it be erroneous in Subſtance by the Default of the Party who gave the Inſtructions for it; becauſe he that takes it out may have a new Original, and ſo is not without Remedy, though the Writ be abated; but if the Clerk who makes the Writ commits an Error in it, it ſhall be amended by his Inſtructions. (*Hill.* 22 *Car.* *B. R.*) But if a judicial Writ be erroneous, it muſt be amended, becauſe the Party cannot have a new Writ; and if it cannot be amended, the Party is without Remedy as to that Way of proceeding he is in. See **Amendment.** A

An Original defective in Form only, is abateable, if it be not amendable by the Statute.

An original Writ which is defective in Form only, is abateable, if it be not amendable by the Statute, as in ſome Caſes it is, and in others not. (*Hill.* 22 *Car.* *B. R.*) For Writs muſt be formal for preventing of Confuſion. B

B. R. may grant a *Mandamus* to compel the Prerogative Court to grant an Adminiſtration.

If the Prerogative Court ſhall refuſe to grant Adminiſtration according to the Teſtator's Will, this Court may grant a Writ of *Mandamus* out of the Crown-Office at the Prayer of the Party grieved to compel them to do it, and the Counteſs of *Berkſhire*'s Caſe, 29 *Jac.* and the Caſe of St. *Burien* in *Cornwall*, were cited to prove it. (*Hill.* 22 *Car.* *B. R.*) Such Writ is a mandatory Writ, and yet remedial; ſo that a mandatory Writ may in ſome Sort be remedial. C

A Writ without a *Teſte*, not good, and why.

A Writ without a *Teſte* is not good. (*Hill.* 22 *Car.* *B. R.*) For the Time may be material when the Writ was taken out, and it is proved by the *Teſte*; for if it be a Writ iſſuing out of any of the Courts of Law at *Weſtminſter-Hall*, it muſt bear *Teſte* ſome Day in Term, wherein the Court did ſit, otherwiſe it is a void Writ. But the Court of Chancery being always open, Writs from thence may bear *Teſte* there, as well in Vacation as Term-time, upon any Day but a Sunday; but a Writ *Teſte* either at Common Law or in Chancery upon a Sunday is void, for that is not *dies juridicus*. See the Act made *tempore Car.* 2. D

Writs of the Courts of *Weſtminſter* are of no Force in Counties Palatine, except *Quo minus* or Outlawries.

Writs iſſuing out of any of the Courts at *Weſtminſter*, except *Quo minus* or Outlawries, do not run, that is, are of no Force within the County Palatine of *Cheſter*, or other County Palatine. (*Hill.* 22 *Car.* *B. R.*) Becauſe they have *jura regalia* within their Juriſdictions, and are not ſubject unto other Juriſdictions; but of late Writs of *Latitat* have been made out into thoſe Counties. E

Sheriff's Bailiffs cannot execute a Writ without a Warrant.

The Sheriffs Bailiffs cannot execute a Writ directed unto the Sheriff, without the Sheriff's Warrant. (*Paſch.* 23 *Car.* *B. R.*) And if he do, he is liable to an Action for acting without Authority. F

A **Where** the Sheriff is Judge of the Court, a Writ which ſhould otherwiſe have been directed unto him, ſhall be directed to the Serjeants of the Mace. (*Paſch.* 23 *Car. B. R.*) That is, in ſuch Places where there are ſuch Serjeants, who are the next Officers under him; for the Party cannot be Judge and Miniſter alſo in a Cauſe.

Where the Sheriff is Judge, the Writs are directed to the Serjeants of the Mace.

B **After** Judgment in a Cauſe there can no Plea be pleaded in Abatement of the Writ upon which the Action was commenced. (*Paſch.* 24 *Car. B. R.*) For the Writ is allowed good by the pleading and proceeding to Judgment, and if you once ſlip your Opportunity in pleading, you ſlip it for ever.

After Judgment there can be no Plea in Abatement of the Writ.

C **In** a Writ of Dower the Tenant may well plead *his petita* in Abatement of the Writ of Dower. (*Paſch.* 24 *Car. B. R.*) That is, that the Defendant hath demanded her Dower by another former Writ depending, for ſhe can recover but once.

What the Tenant may plead in Abatement of a Writ of Dower.

D **In** an Action of Debt, it is a good Plea in Abatement of the Plaintiff's Writ, to ſay that the Plaintiff hath received Part of the Debt, for which he ſues, ſince his Action brought; but it is no good Plea in an Action upon the Caſe. (*Paſch.* 24 *Car. B. R.* and *Trin.* 24 *Car. B. R.*) For in Debt the Plaintiff is to recover the whole Debt he declares for; but in an Action upon the Caſe the Plaintiff is to recover no more than he can prove he is damnified by not paying of what he demands; and the Money received ſince the Action brought, can but abate the Damages, and doth not deſtroy his Writ, for it was incertain at the bringing of the Writ how much he was damnified; but in Debt the Certainty of the Thing demanded did appear.

Part of the Debt received ſince the Action brought is a good Plea in Abatement of the Writ, in Debt; but not in Caſe.

E **The** Writ directed to call one to the Dignity of a Serjeant at Law, is a cloſe Writ, that is, ſealed up, to ſignify it is his Duty to keep cloſe his Client's Cauſe, and not to reveal it; but the Writ directed to one to call him to the Place and Dignity of Chief Juſtice, or other Judge, is an open Writ, and not cloſed up, to ſhew that his Duty is to do open Juſtice unto all. (*Mich.* 24 *Car. B. R.*) So ſaid in a Speech made by one of the Commiſſioners of the Broad Seal upon the calling of a new Judge to this Bench.

Why the Writ to call one to be Serjeant at Law is ſealed, and that to call one to be a Judge is open.

F **A Writ** of Error brought by the Bail to reverſe a Judgment given againſt the Principal only, is abateable; (by *Rolle* Chief Juſtice.) But where the Judgment was given againſt the Principal, and afterwards upon a *Sci. Fa.* againſt the Bail, there the Bail may bring a Writ of Error *tam in redditione judicii*, againſt the Principal, *quam in adjudicatione executionis*, againſt the Bail, *ſuper judicium illud*, *Mich.* 1694. For the Bail may be prejudiced by ſuch a Judgment againſt the Principal; for if the principal Judgment is erroneous and revers'd, the Judgment againſt the Bail, which is dependant upon it, muſt be reverſed alſo. See before **Bail** and **Error**.

A Writ of Error brought by the Bail to reverſe a Judgment againſt the Principal only is abateable.

An original Writ determines by the Outlawry.

A **If** the Party be ſued to an Outlawry upon an original Writ, the Writ is determined by the Outlawry, for it hath had its full Effect, which was to make the Party come in and appear, and anſwer the Plaintiff, or elſe to outlaw the Defendant, if he ſhould not appear. By *Rolle* Chief Juſtice, *Hill.* 1650. *B. S.*) But before he ſhall reverſe it, he muſt enter into a Recognizance in Court with Sureties to appear to a new original Writ; but the late Statute made 4 & 5 *W. & M.* (which ſee) hath made ſome Alteration of the Law in this Point.

If the Bond given to the Sheriff for Appearance be put in Suit, the Writ muſt be directed to the Coroner.

B **Where** the Sheriff's Bond which he took for the Defendant's Appearance, is put in Suit, the Writ taken out to arreſt the Defendant upon this Bond, ought to be directed unto the Coroner, becauſe the Bond is to be ſued in the Name of the Sheriff. (*Paſch.* 1650. *B. S.* 17 *Apr.*) And ſo he is accounted in Law to be a Party, and is not to act for his own Intereſt; but as ſoon as he is out of his Office, then it is directed to the Sheriff as other Writs are. But *Note*, The Sheriff cannot hold any Perſon arreſted at his Suit upon an Appearance-bond to more than a forty Pound Bail-bond, and that only is with a Condition, that the Defendant ſhall appear and file Common Bail at the Return of the Writ.

Delays in Suits in perſonal Actions remedied by taking away the 15 Days.
13 **Car.** 2. **cap.** 4. **ſeſſ.** 4.

C **Delays** in Suits by Reaſon of fifteen Days between the *Teſte* and Return of Writs in perſonal Actions where the Suit is by Original, remedied.

How Returns ſhall be in all real Actions.
16 **Car.** 1. **cap.** 6.

D **See** the Act entituled, *An Act concerning the Limitation and Abbreviation of* Michaelmas *Term, and how the Returns ſhall be in all real Actions.*

A Writ executed upon the Day of the Return and good.
So a Jury charged the ſame Day, who give a Verdict the next Day, is good.

E **A Writ** of Enquiry executed upon the Day of the Return, and held good. *Moor,* Caſe 537. So a Jury charged the ſame Day, who gave a Verdict the next Day, and good. *Ibid.*

Where an Original varies, it is ill.
No Original is help'd by the Statute.

F **Where** there is an original Writ which varies in Subſtance from the Count, this is not remedied by the Statute of *Jeofails*; but when there is no Original, it is helped by the Statute of *Jeofails.* 5 *Rep.* 37.

Writs in real and perſonal Actions, how to be.
When joint, and when ſeveral.

G **How** to bring Writs in all real and perſonal Actions, and when they ſhall be joint, and when ſeveral. 8 *Rep.* from 86 to 89.

Where the Court will order a Writ of Error to be amended, and where not.

H **The** Court will not order a Curſitor to amend a Writ of Error according to his Inſtructions, it being for the reverſing of a Judgment. But where it is to make a good Judgment, they will do it. *Paſch.* 12 *W. B. R.*

A A Writ of *Quare Impedit* is always general. 3 *Lev.* 377.

A Writ of *Quare Impedit* is always general.

B The Statute of 21 *Jac. cap.* 16. hath provided a new Writ after Judgment or Outlawry reverſed; but not after Death of the Plaintiff. *Lutw.* 264.

The Statute hath provided a new Writ after Judgment or Outlawry reverſed, but not after the Plaintiff's Death. 21 Jac. cap. 16.

C The Defendant ſhall not be admitted to ſay, That a judicial Writ was ſued out at any other Time than in the Term. *Lutw.* 337.

The Defendant ſhall not ſay, That a judicial Writ was ſued out at any other Time than in Term.

D The Writ was *Cepit Averia*, and the Count was one Mare, this is help'd after a Verdict by the *Oxford* Act made 16 & 17 *Car.* 2. *cap.* 8.

Where a Variance between the Writ and Count help'd after a Verdict. 16 & 17 Car. 2. cap. 8.

E *Clauſum fregit* in the Writ, and *Clauſa* in the Count. *Lutw.* 1181, 1342.

F If one brings a Writ of Ejectment, and pending the Suit he makes an Entry into the Land for which the Action is brought; the Defendant may plead this Entry in Abatement of his Writ: For by the Entry he is ſuppoſed to have gained the Poſſeſſion, and ſo hath no Cauſe of Action. *Note*, This was the Law before the Rule for confeſſing of Leaſe, Entry and Ouſter was made.

Where Entry pending the Action may be pleaded in Abatement.

G A Writ of Poſſeſſion was *Teſte* upon a Sunday, and for that Reaſon a Writ of Reſtitution was awarded. *Note, Dies Dominicus non eſt Dies Juridicus. Hill.* 10 & 11 *W. B.R.* See Statute 29 *Car.* 2. *cap.* 7.

A Writ of Poſſeſſion was *Teſte* on a Sunday, and therefore void. 29 Car. 2. cap. 7.

H Where a Writ is ſued out, directed to the Sheriff returnable in ſome Court: If ſuch Writ be delivered to the Sheriff to whom it is directed to be executed, and the Plaintiff afterwards comes to the Sheriff, and demands the Writ to be delivered back to him, the Sheriff cannot do it, but muſt return it, and file it in the Court where it is returnable, unleſs the Plaintiff can before the Return procure a *Superſedeas* to it. Becauſe the Sheriff is the Officer of the Court, and the Writ when it is out of the Plaintiff's Hands, and in the Sheriff's Cuſtody, is the Writ of the Court where it is returnable, to which Court the Sheriff is anſwerable. *Paſch.* 12 *W. B. R.*

The Plaintiff cannot take back a Writ delivered to the Sheriff to be executed.

It muſt be returned and filed, and why.

Writ of Inquiry of Damages.

See { Inquiry.
Notice.

Writ of Inquiry of Damages, what.

This is a Judicial Writ, and iſſues out to the Sheriff upon a Judgment by Default, in Caſe, Covenant, Treſpaſs, Trover, Aſſumpſit, &c. commanding him to ſummon a Jury to inquire what Damages the Plaintiff hath ſuſtained occaſione præmiſſorum, **and when this is returned with the Inquiſition, a Rule for Judgment is given upon it, and if nothing be ſaid to the contrary, Judgment is thereupon entred up.** A

The Court will quaſh this Writ if the Plaintiff execute it without Notice to the Defendant.

The Court will quaſh a Writ of Inquiry of Damages, and not ſuffer it to be filed, if the Plaintiff do execute it without giving due Notice of the Execution thereof unto the Defendant. (*Hill.* 22 *Car. B. R.*) Becauſe the Defendant was ſurpriſed thereby, that he could not make his Defence in Mitigation of Damages ſo fully as otherwiſe he might have done, and alſo the Plaintiff acted contrary to the known Rules and Practice of the Court, which the Court (upon Complaint) always takes Care to rectify. B

If it doth not appear that a Writ of Inquiry has been executed, the Plaintiff may ſue out another.

If it do not appear to the Court by the Return, or by ſome other Way, that a Writ of Inquiry hath been executed, the Plaintiff may, if he thinks fit, ſue out another Writ of Inquiry, and give new Notice of the executing thereof. (*Mich.* 22 *Car. B. R.*) For if it hath not been executed, it is as if there had been no ſuch Writ. C

Where a Writ of Inquiry is to iſſue, for what Cauſe, and how to be executed.

A Writ of Inquiry is to iſſue forth where a Judgment is had in Treſpaſs, Treſpaſs upon the Caſe, Replevin, *&c.* upon a *Nihil dicit*, *Non ſum informatus*, or a Demurrer, and not upon a Verdict; and this Writ is to ſummon a Jury to find what Damages the Plaintiff hath ſuſtained in the Cauſe, which Writ is executed before the Sheriff or his Deputy, and both Parties have the Liberty of being heard before D the Sheriff by their Counſel or Attorneys, and Evidence may be given on both Sides; but in caſe an *Indebitatus* is brought for 100 *l.* for Goods ſold, and the Defendant lets this go by Default, and the Plaintiff at the executing of the Writ of Inquiry gives no Evidence to the Jury of any Goods ſold or delivered to the Defendant; in this Caſe the Jury muſt find ſome Damages, becauſe the Defendant hath admitted that there is Damage; but there not being any proved, they ought not to find any more than one Penny, or ſome ſuch ſmall Matter: So likewiſe in Caſe of a Treſpaſs, and other Matters where Damages are to be recovered; for it will not be ſufficient to tell the Jury that the Defendant hath confeſs'd the Action, and therefore they muſt give him good Damages; but it is the Duty of the Jury to obſerve their Directions in the Writ, which is diligently to enquire what Damages the Plaintiff hath ſuſtained, which cannot be without Evidence given them. For if the Law ſhould be otherwiſe, there were no need at all of a Writ of Inquiry, but the Plaintiff might inſiſt upon the Damages laid in his Declaration.

A **If** there be Error in a Writ of Inquiry of Damages, the Court upon the Prayer of the Party, will grant him a new Writ, but will not ſuffer the old Writ to be amended. *Paſch. 23 Car. B. R.*

If there be Error in this Writ, the Court will grant a new one.

B **If** upon the executing a Writ of Inquiry of Damages, the Sheriff do refuſe to ſwear and examine ſome of the Witneſſes produced on either Part, and yet doth execute the Writ; this Court will grant a new Writ to the Party grieved, for the old Writ was not executed. (1651. *B. S.*) Becauſe all the Evidence offered was not heard, which ought to have been done on both Sides, that Things may the more clearly appear to the Jury.

Likewiſe on the Sheriff's refuſing to examine ſome of the Witneſſes.

C **A Bailiff** of a Liberty cannot execute a Writ of Inquiry, but the Sheriff muſt do it. *Hob.* 83.

Who muſt execute a Writ of Inquiry.

D **If** a Writ of Error be brought into this Court to reverſe a Judgment given againſt a Plaintiff in another Court, and the Judgment is reverſed, this Court may grant a Writ of Inquiry of Damages, if it was ſuch a Judgment whereupon a Writ of Inquiry did lie, *viz.* a Judgment in Ejectment, Treſpaſs, Caſe, Covenant, *&c.*

The Court may grant a Writ of Inquiry where a Judgment is reverſed.

E **When** Writs of Inquiry upon interlocutory Judgments after Death of the Parties ſhall be ſued out. See at large 8 *&* 9 *W. cap.* 10. *ſect.* 6. See Title **Judgments.**

Writs of Inquiry upon interlocutory Judgments after Death. 8 & 9 **W.** cap. 10. **Sect.** 6.

F **A Writ** alter'd after 'tis ſealed is a great Miſdemeanor; but no Ground to quaſh the Proceedings. *Mod. Caſes in Law and Equity* 243.

Writ altered.

G **A Sheriff** ordered to return his Writ or be committed, tho' an Injunction. *Ibid.* 315, 16.

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H **A** *Latitat* may be ſued out before the Cauſe of Action. *Ibid.* 343.

When to be ſued out.

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SUPPLEMENT.

Habeas Corpus.

See **Certiorari** 2.

Habeas Corpus, after interlocutory Judgment, or Iſſue joined, too late.

1. A **Habeas Corpus** *cum cauſa* was brought to remove a Cauſe out of a Borough Court, after Interlocutory Judgment. *Curia*: It came too late. *Procedendo* granted. *Trin.* 7, 8 *Geo.* 2. *C. B. Wyat* againſt *Markham*. A like Writ being brought after Iſſue joined, the inferior Court notwithſtanding proceeded to Trial. On Motion for an Attachment, it was held that they might proceed. *Mich.* 8 *Geo.* 2. *C. B. Hornbuckle* againſt *Eaton*. *Stat.* 43 *Eliz. c.* 5. 21 *Jac.* 1. *c.* 23.

Attachment againſt a Sheriff for demanding more than 1 *s.* a Mile for bringing up a Defendant.

2. **The** Defendant being in the Cuſtody of the Sheriffs of *Briſtol*, and bringing a *Habeas Corpus*, tendred the Sheriffs ſeven Guineas (which is above 1 *s.* *per* Mile); the Sheriffs refuſed to accept it, and demanded 10 *l.* Attachment granted againſt them. *Hil.* 10 *Geo.* 2. *C. B. Fling's* Caſe. *Stat.* 31 *Car.* 2. *c.* 2.

Priſoner brought up by *Habeas Corpus* not to be received before the Return.

3. **On** the fourth of *November*, *William Day* was brought at his own Requeſt into Court by the Sheriff of the County of *Southampton*, by Virtue of a Writ of *Habeas Corpus*, returnable in Court on *Thurſday* next after fifteen Days of St. *Martin*, being the laſt Day of Term. *Curia*: We will not receive him before the Return of the Writ. *Mich.* 8 *Geo.* 2. *C. B. Day's* Caſe.

Priſoner may be brought into Court on a *Habeas Corpus* at any Time between the Return and Appearance-Day.

4. **Habeas Corpus** returnable from the Day of St. *Michael* in one Month, which was *Sunday* the 27th of *October*; by Virtue of which Writ the Defendant was brought into Court and committed on the *Monday*, the Court ſaying that the Defendant might be brought in at any Time between the Return-Day and the Appearance-Day. *Mich.* 8. *Geo.* 2. *C. B. Hewet* againſt *Powel*.

Priſoner bringing a *Habeas Corpus* muſt either pay the Sheriff's Fees, or be remanded.

5. *Iſaac Hope* being in the Cuſtody of the Sheriff of the County of *Warwick*, brought a *Habeas Corpus* in order to remove himſelf into the *Fleet*; the Sheriff brought him into Court, and inſiſted to be paid his Fees, for bringing the Priſoner up before he ſhould be committed. *Curia:* The Priſoner being brought up at his own Deſire, muſt either pay the Sheriff 1 *s. per* Mile for bringing him up, or be remanded; which the Priſoner not being able to pay, was accordingly remanded. *Mich.* 8 *Geo.* 2. *C. B. Hope*'s Caſe.

On *Certiorari* or *Habeas Corpus*, Plaintiff not tied to the Cauſe of Action below, may declare as he pleaſes.

6. **Held** *per Curiam*, That on a *Certiorari* or *Habeas Corpus* the Plaintiff may declare in this Court as he pleaſes, and is not confined to the ſame Species of Action he declared in below, though the Parties were at Iſſue in the Court below. *Eaſter* 13 *Geo.* 2. *C. B. Turner* againſt *Bean*.

Habeas Corpora Juratorum. See **Amendment** 13.

Hundred. See **Eſcape** 2.

Imparlance.

Imparlance granted in Slander, for charging the Plaintiff with Murder, the Plaintiff being indicted for the Murder.

MOtion for an Imparlance. The Action was brought for Words accuſing the Plaintiff of the Murder of the Defendant's Huſband upon the High Seas: The Plaintiff had been committed for the Murder by the Judge of the Admiralty, and was now in Cuſtody to be tried for the ſame at the next Seſſion of the Admiralty, for Offences committed upon the High Seas; after which Commitment this Action was brought. *Curia:* Let the Defendant have an Imparlance. If the Plaintiff at his Trial be convicted, this Action will ſignify nothing; if he be acquitted, the Acquittal will be of Service to him in this Action: This may be an Artifice to ſift what Evidence the Proſecutrix has to produce on the Indictment; for upon a Juſtification the Defendant muſt produce the ſame Evidence, to prove her Juſtification, as muſt be produced upon the Indictment. *Hil.* 10 *Geo.* 2. *C. B. Sibſon* againſt *Neven*.

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See Declaration 14.

Irregularity in Notice on Proceſs.

1. Irregularity in the Notice on the Copy of the Writ ſerved on Defendant need not be complained of till Notice be given of a Declaration left in the Office; and if the Defendant applies after Notice of a Declaration, and before interlocutory Judgment, 'tis Time enough. *Trin.* 7, 8 *Geo.* 2. *C. B. Jemmet* againſt *Voyer. Mich.* 12 *Geo.* 2. *C. B. White* againſt *Waſhington.*

In entering Appearance.

2. Irregularity in entering an Appearance too ſoon by the Plaintiff for the Defendant, muſt be complained of before Judgment. *Trin.* 6, 7 *Geo.* 2. *C. B. Morſe* againſt *Farnham.*

In delivering Declaration, when to be complained of.

3. Irregularity in delivering the Declaration muſt be complained of before Writ of Inquiry be executed. *Mich.* 2 *Geo.* 2. *C. B. Wyat* againſt *Bacon.* Application the Day before the Day for executing the Writ of Inquiry too late. *Hil.* 5 *Geo.* 2. *C. B. Smith* and *Jenks.* It muſt be two Days before the Day of executing the Inquiry. *Trin.* 10, 11 *Geo.* 2. *C. B. Grimes* againſt *Cleaver.*

Iſſue.

Whether the Iſſue may be tendered to the Attorney in the Country.

1. A Plea was demanded of the Agent in Town, but the Plea was delivered by the Defendant's Attorney in the Country; whereupon the Plaintiff's Attorney in the Country tender'd him the Iſſue, which he refuſing to pay for, Judgment was ſigned, and held to be regular, the Defendant's Attorney having undertook to be Agent, by pleading in the Country. *Mich.* 6 *Geo.* 2. *C. B. Moore* againſt *Hodgſon.* By Agreement between the Country Attornies the Iſſue was to be delivered in the Country, but was tendered to the Agent in Town, and not being paid for, Judgment was ſigned, and held to be regular, the Agreement being void. *Mich.* 9 *Geo.* 2. *C. B. Haſelfoot* againſt *Duke.*

When the Iſſue may be left in the Office.

2. The Plaintiff's Attorney not being able to find the Defendant's Attorney, left the Iſſue in the Office, and a Notice thereof under his Chamber-Door. The next Day he went to him and demanded the Money for the Iſſue; which the Defendant's Attorney refuſing to pay, inſiſting that the Iſſue ought to have been delivered to him, he ſigned Judgment; which was held to be regular:

For,

For, *per Curiam*, Defendants Attornies muſt pay for the Iſſue-Books at their Peril; and if they are not to be found, Iſſue-Books may be left in the Office. *Mich.* 7 *Geo.* 2. *C. B. Glaſscock* againſt *Martin*. The Defendant's Attorney going out, left a Porter in his Chamber, to whom an Iſſue was tendered; which he refuſing to pay for, Judgment was ſigned, and held to be regular. *Eaſter* 10 *Geo.* 2. *C. B. Rolt* againſt *Way*.

Defendant's Attorney muſt pay for Iſſue immediately, and receive it *De bene eſſe.*

3. **Declared** *per Curiam*, That if the Plaintiff's Attorney tender the Iſſue to the Defendant's Attorney, the Defendant's Attorney muſt pay the Money for it immediately, and accept the Iſſue *De bene eſſe*; and if the Pleadings and the Iſſue do not agree, he may return the Iſſue the next Morning. *Mich.* 4 *Geo.* 2. *C. B. Hammerſley* againſt *Mallory*.

Defendant muſt pay for the Iſſue, though over-charged.

4. **Judgment** was ſigned for not paying for the Iſſue. Motion, that the Judgment might be ſet aſide, for that the Iſſue was overcharged, *viz.* 6 *d. per* Sheet, *i. e.* 4 *d. per* Sheet for the Iſſue, and 2 *d. per* Sheet for Duty, though the Iſſue was wrote cloſe, and only one Stamp uſed. The Court refuſed to ſet aſide the Judgment, and ſaid the Defendant ſhould have paid the whole Demand; and if he was over-charged, he might have applied to the Court, and they would have done him Right. *Mich.* 7 *Geo.* 2. *C. B. Ryder* againſt *Somerfield*.

Judgments.

See { **Abatement** 13.
Amendments 15, 16, 17. | **Damages.**
Priſoners 13.

On ſigning Judgment the *Poſtea* or Inquiſition (if any) to be left in the Office.

1. **Where** Final Judgment ſhall be ſigned upon *Poſtea's* or Inquiſitions upon Writs of Inquiry, ſuch *Poſtea's* or Inquiſitions ſhall immediately be left with the Clerk of the Judgments of the reſpective Prothonotaries, and ſhall not afterwards be taken out of the Office, without Leave of the Court. *Trin.* 13 *Geo.* 2. *C. B.*

Warrant of Attorney to confeſs a Judgment, to be read over by the Party or ſome other to him.

2. **Every** Warrant of Attorney for confeſſing Judgment in this Court, ſhall be read over by the Perſon who is to execute the ſame, or by ſome other Perſon, to him, before the Execution thereof; and if Judgment ſhall be entered upon any ſuch Warrant of Attorney, which ſhall not be ſo read over as aforeſaid, ſuch Judgment upon Motion may be ſet aſide as irregular. *Trin.* 14, 15 *Geo.* 2. *C. B.*

Judgment entered on an old Warrant, upon Affidavit of the Money being unpaid, made by a third Perſon, the Plaintiff being a Lunatic.

3. **Motion** for Leave to enter up Judgment on an old Warrant of Attorney. The Plaintiff being a Lunatic, an Affidavit that the Money was unpaid was made by a Perſon who had received the Intereſt due on the Bond for three Years, ever ſince the Plaintiff's Lunacy, which Affidavit ſhould otherwiſe have been made by the Plaintiff. *Curia:* Let the Judgment be entered up. *Hil.* 12 *Geo.* 2. *C. B. Coppendale* againſt *Sunderland.*

Judgment on a Warrant of Attorney entered on an Affidavit, that the Defendant was alive in *Jamaica* three Months before.

4. **Leave** was given to enter a Judgment on a Warrant of Attorney, on an Affidavit that the Defendant was ſeen alive in *Jamaica* three Months ago. *Mich.* 11 *Geo. C. B. Roundle* againſt *Powel.*

When, and upon what Terms a regular Judgment in Ejectment may be ſet aſide.

5. **Declaration** in a Country Ejectment delivered 3 *Jan.* and for Default of the Tenant's Appearing, Judgment was ſigned. The Landlord heard nothing of this till *Feb.* 25. and then obtained a Judge's Order for ſtaying Proceedings on the Tenant's entring into the common Rule, and taking Notice of Trial for the next Aſſizes, which would be on the 6th of *March*: Notwithſtanding this, the Plaintiff took out Execution. Motion, that it might be ſet aſide, granted. Chief Juſtice: If the Landlord had omitted to apply till it was too late for the Plaintiff to have gone to Trial at the laſt Aſſizes, I ſhould not have thought this Motion regular; but nothing of that is pretended. *Paſch.* 7 *Geo.* 2. *B. R. Dobs* v. *Pasker.*

No Motion in Arreſt of Judgment on the laſt Day of a Term, without Notice.

6. **Motion** in Arreſt of Judgment on the laſt Day of the Term, without any Notice of the Motion. *Curia:* Take a Rule to ſtay the Entry of the Judgment till Cauſe is ſhewn; but for the future we will not receive any Motion in Arreſt of Judgment on the laſt Day of a Term, unleſs Notice of the Motion be given. *Trin.* 7, 8 *Geo.* 2. *C. B. Camp qui tam* againſt *Gale.*

Judgment for the Plaintiff in Treſpaſs, tho' a Verdict againſt him, the Treſpaſs being confeſſed by the Plea.

7. **Treſpaſs** for entring the Plaintiff's Cloſe, and eating his Hay with the Defendant's Cattle. Plea, that the Plaintiff licenſed Defendant to eat up the Fog off the Cloſe with his Cattle: That he put in his Cattle to feed the Fog; and the Plaintiff having a Hay-Stack in the Cloſe, for want of fencing about the Hay-Stack, his Cattle eat the Hay, *&c.* Replication, *De injuria ſua propria*, and Verdict for the Defendant; but Judgment was given for the Plaintiff, and a Writ of Inquiry awarded: The Treſpaſs being confeſſed by the Plea, the Licence is no Juſtification of eating the Plaintiff's Hay; the Defendant ought to have ſecured the Hay at his Peril, and he might have juſtified the doing ſo. *Paſch.* 9 *Geo.* 2. *C. B. Craven* v. *Hanley*, *Comyns* 548. Vide *Poph.* 151. *Noy* 98. 1 *Vent.* 44. 1 *Jones* 388.

Where a Verdict is given as a Security, Judgment ſhould not be entered without Leave of the Court.

8. **A** Verdict was given for the Plaintiff at the Aſſizes, for Security only: The Plaintiff entered up the Judgment, and now brings a *Scire Facias* upon the Judgment. Motion, that the Proceedings might be ſet aſide. *Curia:* The Proceedings muſt be ſet aſide, tis the conſtant Practice; the Plaintiff ſhould not have enter'd up this Judgment without the Leave of the Court. *Trin.* 13 *Geo.* 2. *C. B. Smith* againſt *Smith*.

Where Verdict againſt one Defendant, and Demurrer depending as to the other, Judgment ſhall not be ſtayed till Demurrer determined.

9. **Treſpaſs** and falſe Impriſonment againſt three Defendants; one Defendant pleads not guilty to the whole; whereupon Iſſue was joined, and a Verdict found for the Plaintiff: The two other Defendants pleaded Not guilty to Part, and a Juſtification as to the Reſidue; the Plaintiff joined Iſſue as to the Not guilty, and demurred as to the Juſtification. Motion, that Judgment ſhould be ſtayed upon the Verdict, till the Demurrer was determined; but denied. *Mich.* 7 *Geo.* 2. *B. R. Hall* againſt *Chapman* and others.

Judgment in a joint Action, if irregular againſt one Defendant, muſt be ſet aſide as to all.

10. **Joint** Action; Judgment againſt all the Defendants. One of the Defendants had no Notice either of the Writ or Declaration. Motion, that the Judgment might be ſet aſide. The Plaintiff inſiſted that the Application came too late, for that a Writ of Inquiry had been executed. *Curia:* The Judgment can never be good as to him that was not ſerved; and as the Judgment is joint, it muſt be ſet aſide as againſt all the Defendants. *Hil.* 7 *Geo.* 2. *C. B. Coulſon* againſt *Turnbul* and others.

Judgment upon a *Non Proſ.* at Trial, ſigned after Plaintiff's Death, who died before the Day in Bank, muſt be reverſed by Writ of Error.

11. **The** Plaintiff was nonſuited at Trial, and before the Day in Bank died; after the Plaintiff's Death the Defendant ſigned his Judgment. Motion to ſet this Judgment aſide. *Curia:* This is Error, and not Irregularity, and therefore muſt be reverſed by Writ of Error. *Mich.* 8 *Geo.* 2. *C. B. Miſaubin* againſt *Coſta*. Vide *Carth.* 149.

Judgment-Roll not brought in for ſeven Years, and Defendant taken in Execution.

12. **Motion** to diſcharge a Defendant lately taken in Execution upon a Judgment given ſeven Years ago, for that the Judgment-Roll was not brought in. It was held, that the Attorney ought to have brought in the Roll before the End of the next Term; which the Court now ordered to be done, but ſaid they could not diſcharge the Defendant. *Trin.* 6 *Geo.* 2. *B. R. Daniel* v. *Bretland*.

Judgment vacated.

13. **In** a *Quare Impedit* a Judgment was entred by Virtue of a Warrant of Attorney; which Warrant, upon a Trial on a feigned Iſſue, was found to have been forged. Motion, that the Judgment might be vacated. The Court upon Conſideration ordered a *Vacatur* to be entred in the Margin of the Judgment, which the Secondary did in Court. *Hil.* 6 *Geo.* 2. *C. B. Gibbon* againſt *Bond*.

Juries.

See **Coſts** 6.
Trials 27, 28, 29.
Verdict 3.

Jurors determine their Verdict by huſtling Half-pence in a Hat.

1. ON Affidavit that three of the Jurymen had declared that the Jury determined their Verdict by huſtling Half-pence in a Hat, it was ordered that Final Judgment ſhould be ſtayed, and that the three Jurymen who made this Declaration ſhould attend. *Mich.* 8 *Geo.* 2. *C.B.* *Thomas Hilton*, one of the Jurymen, attended in Perſon, but made no Affidavit in Anſwer to the Charge againſt him. *Curia*: He cannot be examined *viva voce*, therefore let there be a Rule for him to ſhew Cauſe why an Attachment ſhould not iſſue againſt him. *Hil.* 8 *Geo.* 2. *C.B.* *Par* againſt *Soames*. An Attachment was awarded againſt Jurors, for determining their Verdict by the Chance of Half-pence huſtled in a Hat: One of the Jurors had diſcovered the Matter on Oath, the eleven denied it on Oath; but it appeared by Affidavit, that three of them had confeſſed it. Motion, that Proceedings on the Attachment might be ſtayed, upon Payment of Coſts to the Parties, without the Attendance in Court of the Jurors, who lived in *Yorkſhire*. *Curia*: Let all the Jurors attend to be publickly admoniſhed, that the Country may take Warning. *Hil.* 10 *Geo.* 2. *C.B.* *Langdale* againſt *Sutton*.

The Charge of ſtriking a Special Jury to be paid by the Party moving for it, the other Charges to be allowed.

2. The Plaintiff moved for a Special Jury, and at the Trial had a Verdict: This Verdict was afterwards ſet aſide, on Payment of Coſts; and the Queſtion was, whether the Defendant ſhould pay the Plaintiff the Charge of the Special Jury? The Court held that the Charge of ſtriking the Special Jury muſt be paid by the Plaintiff, who moved for it; but that all the other Expences of the Special Jury, as far as reaſonable, muſt be allowed. *Mich.* 10 *Geo.* 2. *C.B.* *Eyles* againſt *Smart*.

Juſtices of the Peace. See **Certiorari** 1.

Limi-

Limitation of Actions.

When the Statute of Limitations has run in the Time of the Teſtator, and he has ſued out a Writ to take his Caſe out of the Statute, his Executor muſt commence his Action within a reaſonable Time.

CAſe *Sur Aſſumpſit*, on a Promiſſory Note brought by the Executor of an Executrix. Plea, *Non aſſumpſit infra ſex annos*. Replication, A *Latitat* ſued out by the Executrix within the ſix Years, with Continuances to 1725. when ſhe died; and afterwards a *Latitat* ſued out by the Plaintiff in 1729. For the Plaintiff were cited *Kinſey* v. *Hayward*, 1 *Lutw.* 256. *Hemings* v. *Holiday*, *Paſch.* 2 *Geo.* 1. *Carth.* 355. *Lethbridge* v. *Chapman*, *Mich.* 3 *Geo.* 2. *C. B.* For the Defendant, *Beſt* v. *Breteten*, and *Morſon* v. *Plucket*, *Trin.* 2 *Geo.* 1. *Lutw.* 256, 261. Chief Juſtice: The Caſe of *Kinſey* v. *Hayward* was reverſed in this Court, and the Reverſal affirmed in Parliament. *Curia:* Wherever the Statute of Limitations takes Place in the Time of the Teſtator, it ſhall run on in the Time of the Executor; and though the Action brought by the Teſtator to take the Caſe out of the Statute, cannot properly be ſaid to be continued in the Time of the Executor, yet the Executor muſt commence his Action within a reaſonable Time after the Probate, and ſo muſt the Adminiſtrator, within a reaſonable Time after the Adminiſtration granted. Of the Reaſonableneſs of that Time the Court are the proper Judges.

What ſhall be a reaſonable Time.

Chief Juſtice, and *Lee* Juſtice: The Statute preſcribing a Year as a reaſonable Time in another Caſe, is a proper Rule to guide the Direction of the Court in this. *Curia:* Here the Plaintiff has lain by a very unreaſonable Time, therefore Judgment for the Defendant. *Trin.* 5 *Geo.* 2. *B. R. Wilcox* v. *Huggins*.

Lunatics.

Where Marriage of Lunatics void.

IN Caſe any Perſon who ſhall be found a Lunatic by Inquiſition, taken by Virtue of a Commiſſion under the Great Seal of *Great Britain*, or any Lunatic, or Perſon under a Phrenzy, whoſe Perſon and Eſtate, by Virtue of any Act of Parliament, ſhall be committed to the Care and Cuſtody of particular Truſtees, ſhall marry before he or ſhe be declared of *ſane* Mind by the Lord High Chancellor of *Great Britain*, the Lords Keepers or Lords Commiſſioners of the Great Seal of *Great Britain* for the Time being, or ſuch Truſtees as aforeſaid, or the major Part of them reſpectively, every ſuch Marriage ſhall be null and void. *Stat.* 15 *Geo.* 2. *c.* 30.

Miſnomer.

See **Abatement** 3, 4.

Miſnomer, whether to be taken Advantage of after the Plaintiff has filed common Bail for the Defendant.

1. THE Defendant was ſerved with Copy of Proceſs, by the Name of *Dubois*; common Bail was filed for him by the Plaintiff, and Judgment ſigned by Default. Motion that the Judgment might be ſet aſide, for that the Defendant's Name was *Davoys*. *Curia*: If before the late Statute the Defendant's Name had been miſtaken in the Proceſs, he could not have taken Advantage of it but by Plea of Miſnomer; and this Act has not altered the Caſe. Motion denied. *Paſch.* 7 *Geo.* 2. *B. R. Hancock* v. *Duboys*.

Miſnomer of Plaintiff or Defendant aided, but not of a third Perſon.

2. **Debt** on a Replevin-Bond: Plea, proſecuted with Effect: And the Sheriff was not damnified. Replication, the Plaint was removed by *Recordari*, Judgment was given for *Thomas*, (who was the Plaintiff in the Suit) and a Return awarded, *&c.* and ſo the ſaid *Rebecca* did not proſecute with Effect: Nevertheleſs, the ſaid *Thomas* (who was the Plaintiff) did not return the Cattle, *&c.* Demurrer. Judgment for the Defendant, becauſe the Plaintiff had aſſigned no Breach; and the Miſtake of the Name of a third Perſon is not aided or amendable, though a Miſnomer of the Plaintiff or Defendant be ſo. *Bridg.* 100. 2 *Lev.* 117. *Paſch.* 10 *Geo.* 2. *C. B. Harvey* v. *Stokes*, *Comyns* 566.

Money brought into Court.

See **Pleading** 42.

At what Time the Defendant may have Leave to pay Money into Court.

1. **Curia**: The Defendant may have Leave to bring Money into Court at any Time before he has pleaded, tho' the Rule to plead be out. *Mich.* 6 *Geo.* 2. *C. B. Anonymus.* The Money muſt be brought into Court before the Plea is delivered. *Mich.* 11 *Geo.* 2. *C. B. Stephenſon* againſt *Thomſon.* But this may be diſpenſed with in caſe of an Accident; as where the Defendant had directed his Attorney to move for Leave to pay Money into Court, the Attorney died before it could be done, and his Clerk delivered the General Iſſue by Miſtake;

the Court gave the Defendant leave to withdraw his Plea, to pay Money into Court, and to plead the ſame Plea *de novo*. *Mich.* 13 *Geo.* 2. *C. B. Uſher* againſt *Edmunds*.

May be paid in Debt, or Covenant for Rent.

2. **Debt** for Rent. Leave given to pay 3 *l.* into Court, and to plead *Nil debet*. *Trin.* 7, 8 *Geo.* 2. *C. B. Dixon* againſt *Allen*. *Mich.* 12 *Geo.* 2. *C. B. White* againſt *Daman*. In Covenant for Non-payment of Rent, the Defendant may have Leave to pay Money into Court.

Of bringing Goods into Court.

3. **Trover.** Leave to bring the Goods into Court denied, they appearing to be cumberſome: But the Plaintiff was ordered to ſhew Cauſe why he ſhould not accept the Goods, and his Coſts. *Trin.* 10 *Geo.* 2. *C. B. Cooke* againſt *Holgate*. Leave given to bring Working-Tools into Court. *Hil.* 7 *Geo.* 2. *C. B. Billings* againſt *Wilcox*. Leave to bring Goods into Court denied. *Hil.* 6 *Geo.* 2. *C. B. Watkinſon* againſt *Cockſhet*. In Trover, Leave given to bring a Note into Court. Serjeant *Darnall* ſaid he had obtained Leave to bring two Fowls into Court; and at another Time a Spare-rib of Pork, or Money in Lieu of it. *Mich.* 4 *Geo.* 2. *C. B. Timey* againſt *Clarke*.

Can't add a farther Sum after Plea.

4. **The** Defendant paid 2 *l.* 12 *s.* into Court on the common Rule, and pleaded; the Plaintiff refuſed to accept the Money, and joined Iſſue. Motion for Leave to amend the Rule, by making the Sum 7 *l.* 12 *s.* denied. *Curia:* This is paying Money into Court after Plea pleaded. Beſides, this may introduce Tricks to try whether a Plaintiff will accept of leſs than his Due. *Hil.* 13 *Geo.* 2. *C. B. Swan* againſt *Freeman*.

Where the Plaintiff accepts the Money on the common Rule, he may proceed, unleſs the Defendant pays the Coſts on Demand.

5. **Motion** for an Attachment againſt the Defendant, for not paying Coſts taxed, purſuant to a Rule for paying Money into Court; which Money the Plaintiff had accepted. The Rule was read. *Curia:* We cannot grant an Attachment, becauſe there is no poſitive Order for the Defendant to pay the Money: But if the Defendant does not pay the Coſts upon Demand, the Plaintiff may proceed notwithſtanding the Rule, without applying to the Court to have it diſcharged. *Mich.* 14 *Geo.* 2. *C. B. Scarral* againſt *Horton*.

Plaintiff proceeding after Money paid into Court, allowed to take it out on paying the Defendant his ſubſequent Coſts.

6. **The** Defendant paid Money into Court on the common Rule; the Plaintiff refuſed to accept it, proceeded to Iſſue, and gave Notice of Trial; but afterwards moved that he might have the Money with Coſts to the Time of the Rule, paying the Defendant his ſubſequent Coſts. *Curia:* Let the Defendant ſhew Cauſe. Afterwards ordered accordingly. *Hil.* 13 *Geo.* 2. *C. B. Davis* againſt *Manſel*.

Money paid into Court not to be paid back to the Defendant, tho' Plaintiff died before Trial.

7. **The** Defendant had paid 10 *l.* into Court on the common Rule; the Plaintiff died before Trial. Motion, that the Money might be paid back to the Defendant. *Curia:* The Payment into Court is an Admiſſion that the Money was due to the Plaintiff, and

and therefore ought not to be paid back to the Defendant. *Eaſter 9 Geo.* 2. *C. B. Crookhay* againſt *Martin*.

Whether Money brought into Court may in any Caſe be paid back to the Defendant.

8. **Money** was paid into Court upon the common Rule; the Plaintiff died before Verdict; and ſeveral Applications had been made to the Executors to take the Money, but they had not done it. Motion, that it might be paid back to the Defendant, denied. *Page* Juſtice: In *C. B.* ſuch Motion might be regular, becauſe there the bringing it into Court is not a direct Payment; for if the Plaintiff does not prove as much due to him as was brought, the Defendant is intitled to the Remainder; but here it is a direct Payment, and the Plaintiff is intitled to the whole. *Mich.* 6 *Geo.* 2. *B. R. Jenner* v. *Paddington*.

Mutual Debt.

Mutual Debts; one Debt may be ſet againſt the other.

1. **Where** there are Mutual Debts between the Plaintiff and Defendant, or if either Party ſue or be ſued as Executor or Adminiſtrator, where there are mutual Debts between the Teſtator or Inteſtate and either Party, one Debt may be ſet againſt the other, and ſuch Matter may be given in Evidence upon the General Iſſue, or pleaded in Bar, as the Nature of the Caſe may require; ſo as at the Time of his pleading the General Iſſue, where any ſuch Debt of the Plaintiff, his Teſtator or Inteſtate, is intended to be inſiſted on in Evidence, Notice ſhall be given of the particular Sum or Debt ſo intended to be inſiſted on, and upon what Account it became due; or otherwiſe ſuch Matter ſhall not be allowed in Evidence upon ſuch General Iſſue. *Stat.* 2 *Geo.* 2. *c.* 22. §. 11. Made perpetual by *Stat.* 8 *Geo.* 2. *c.* 24. §. 4.

And how:

Tho' of a different Nature.

2. **By** Virtue of the above Clauſe made perpetual, mutual Debts may be ſet againſt each other, either by being pleaded in Bar, or given in Evidence on the General Iſſue, in the Manner above-mentioned, notwithſtanding that ſuch Debts are deemed in Law to be of a different Nature; unleſs in Caſes where either of the ſaid Debts ſhall accrue by reaſon of a Penalty contained in any Bond or Penalty; and in all Caſes where either the Debt for which the Action ſhall be brought, or the Debt intended to be ſet againſt the ſame, ſhall accrue by reaſon of any ſuch Penalty, the Debt intended to be ſet off ſhall be pleaded in Bar; in which Plea ſhall be ſhewn how much is truly and juſtly due on either ſide; and in caſe the Plaintiff ſhall recover in any ſuch Action or Suit, Judgment ſhall be entered for no more than ſhall appear to be truly and juſtly due to the Plaintiff after one Debt being ſet againſt the other as aforeſaid. *Stat.* 8 *Geo.* 2. *c.* 24. §. 5.

How in Caſes of Penalties.

Caſe by Executor for Rent received by Defendant, which was due to Teſtator in his Life-time, the Defendant cannot ſet off a Debt due from Teſtator.

3. **The** Plaintiff was ſurviving Executrix, and proved the Will; the Defendant after the Death of the Teſtator received Rents that were due to the Teſtator in his Life-time: The Plaintiff ſued in her own Name, and not as Executrix, for Money had and received to her Uſe: The Defendant ſet off a Debt due to him from the Teſtator. 1 *Q.* Whether the Plaintiff ſhould not have named herſelf Executrix? *Reſp.* It is right in her own Name: Where the Cauſe of Action aroſe after the Death of the Teſtator, the Executor muſt ſue in his own Name. If the Plaintiff had named herſelf Executrix, ſhe ſhould not have been excuſed from Coſts. 1 *Salk.* 27, 207. *Jenkins & Ux'* v. *Plume.* 6 *Mod.* 93. *Carth.* 335. *Curry* v. *Stevens.* 2 *Q.* If the Defendant can ſet off? *Reſp.* He cannot; for if the Statute was to be extended to this Caſe, it would let in Fraud, and enable Executors to pay the Aſſets of Teſtator in Diſcharge of ſimple Contract Debts, in Prejudice of Creditors by Specialty. *Mich.* 11 *Geo.* 2. *C. B.* *Shipman* againſt *Thomſon.*

Notices.

See

Declaration 7, 11, 12, 13.
Dower 1.
Scire Fieri Inquiry.
Trials 9, 10, 11, 12, 13, 14.
Writ of Inquiry 2, 3, 4, 5, 6, 7, 8, 10.

Notices, when to be given.

1. **NOtices** of all Kinds ſhall be given before Nine o'Clock in the Evening. *Eaſter* 10 *Geo.* 2. *C. B.*

Of giving a Term's Notice of Proceeding, where no Proceedings for four Terms.

2. **In** all Caſes in which there have been no Proceedings for four Terms, excluſive of the Term in which the laſt Proceeding was had, the Party who deſires to proceed again ſhall give a Term's Notice of ſuch Proceeding: Such Notice ſhall be given before the Eſſoin-Day of the fifth or other ſubſequent Term. A Judge's Summons, if no Order be made thereupon, ſhall not be deemed a Proceeding; but a Notice of Trial, though afterwards countermanded, ſhall be deemed a Proceeding within the Meaning of this Rule. *Eaſter* 13 *Geo.* 2. *C. B.*

Notice on Proceſs.

3. **Proceedings** ſtayed, becauſe the Defendant's Name was not put to the *Engliſh* Notice written upon the Copy of the Proceſs, purſuant to *Stat.* 5 *Geo.* 2. *c.* 27. *Trin.* 6 *Geo.* 2. *B. R.* *Clark* v. *Paget.*

Outlawry.

See Error 3.

A Man who appears publickly may be outlawed, if he endeavours to avoid the Proceſs of the Law.

1. ON a Motion that an Outlawry might be reverſed at the Plaintiff's Expence, it appeared that the Plaintiff had endeavoured to get the Defendant arreſted, but could not, the Defendant living on the Borders of the County of *Surrey*, adjoining to *Kent*; and when a *Surrey* Officer came to arreſt him, he would leap over a Hedge into *Kent*, and bid Defiance to the Officer. *Curia:* Though it is ſworn that the Defendant appeared publickly, yet it is plain he endeavoured to avoid the Proceſs of the Law. Motion denied. *Hil.* 12 *Geo.* 2. *C. B. Holman* againſt *Braſier.*

Defendant, who abſconded, outlawed in the firſt Inſtance.

2. **Motion** to ſet aſide an Outlawry, on Pretence that the Defendant appeared publickly, and never abſconded, and that the Plaintiff had ſued him to an Outlawry in the firſt Inſtance, without endeavouring to get him arreſted on the ordinary Proceſs. It appeared to the Court that the Defendant had abſconded Years together. *Denton* Juſtice: In the King's Bench they never inquire farther than whether the Defendant abſconded or not, and never ask if he was outlawed in the firſt Inſtance. *Curia:* The Outlawry is regular, and not like the Caſe which happened the other Day; where it appeared that the Defendant, who was outlawed in the firſt Inſtance, was a viſible Perſon. *Mich.* 6 *Geo.* 2. *C. B. Paterſon* againſt *Greave.*

A viſible Perſon outlawed, he being a deſperate Perſon, and riding armed.

3. **Motion** that the Plaintiff might reverſe an Outlawry at his own Expence, the Defendant living in *Ely*, to the Plaintiff's Knowledge, and was viſible there, and yet outlawed in *London*. Rule to ſhew Cauſe; ſhewed for Cauſe, that the Defendant was a deſperate Man, and rode about armed with Piſtols, and told the Plaintiff that he abſconded. *Price* and *Forteſcue* Juſtices ſaid, he was well outlawed. Chief Juſtice *contra*. *Denton* abſent. *Hil.* 3 *Geo.* 2. *C. B. Pots* againſt *Voyce.*

Two who appeared publickly outlawed for ſmall Debts; Attorney to make Recompence.

4. **One** Defendant was outlawed on a common *Clauſum fregit*, for a Debt of 15 *s.* 6 *d.* and the other Defendant was outlawed in like manner for a Debt of 1 *l.* 5 *s.* Rule to ſhew Cauſe why the Outlawry ſhould not be reverſed at the Plaintiff's Expence, on the Defendants Affidavit that they appeared and dealt publickly. For the Plaintiff it was ſaid, that where a Defendant cannot be come at to be ſerved with Proceſs, the Plaintiff has no Remedy but an

Outlawry. *Curia:* Let the Rule be enlarged till the next Term, that the Plaintiff's Attorney may in the mean time make Satisfaction to the Parties. *Mich.* 12 *Geo.* 2. *C. B.* *Bennet* againſt *Sidenham.* *Bennet* againſt *Skinner.*

Outlawry, when Defendant is beyond Sea, muſt be reverſed on Writ of Error, and not on Motion.

5. **On** Affidavits that the Defendant at the Time he was returned outlawed, and long before, and after, was beyond the Seas, it was moved that the Outlawry might be reverſed at the Plaintiff's Expence. Denied. *Curia:* This is Error, and not Irregularity. *Mich.* 7 *Geo.* 2. *C. B.* *North* againſt *Chambers.* *Eaſter* 11 *Geo.* 2. *C. B.* *Blunt* againſt *Beale.*

Appearance not neceſſary to the Exigent, on the ſuing out a *Superſedeas.*

6. **The** Defendant had given Notice to the Plaintiff, that he had appeared, and obtained a *Superſedeas* to the Exigent; but no *Superſedeas* being found to be allowed, the Defendant was outlawed. On Motion to reverſe it, the Defendant urged that he had entred an Appearance with the Exigenter. *Curia:* An Appearance is not neceſſary; the *Superſedeas* is of itſelf an Appearance, if delivered to the Sheriff before the Return of the Exigent: But that not having been done, the Motion was denied. *Mich.* 11 *Geo.* 2. *C. B.* *Peach* againſt *Wadland.* *Vide* the Rule *Mich.* 17 *Car.* 2. 2 *Jac.* 2. *C. B.* *Dier* 222, 223. *Note;* The Exigenter's Appearance-Book was but of two Years ſtanding, and this appeared to be a new Impoſition by him.

Capias Utlegatum executed on a *Sunday.*

7. **Capias Utlegatum** executed on a *Sunday.* Motion that the Defendant might be diſcharged, and that an Attachment might iſſue. *Curia:* Let the Defendant be diſcharged; but as to the Attachment, he may have his Remedy on the *Stat.* 29 *Car.* 2. *c.* 7. *Eaſter* 6 *Geo.* 2. *C. B.* *Osborn* againſt *Carter.*

Landlord ſhall not be paid a Year's Rent out of Goods taken on a *Capias Utlegatum.*

8. **Motion** by a Landlord, that out of Goods taken upon a *Capias Utlegatum* the Sheriff might pay him a Year's Rent, purſuant to the *Stat.* 8 *Ann.* *c.* 14. The Doubt was, whether a *Capias Utlegatum* was within the Statute? The Court held, the *Capias Utlegatum* was within the Exception of the Statute, §. 8. and had been ſo adjudged in *B. R.* *Eden* v. *Crane,* *Trin.* 1712. *Mich.* 2 *Geo.* 2. *C. B.* *Pindar* againſt *Saunderſon.*

One outlawed diſcharged on the Act for Relief of inſolvent Debtors.

9. **The** Defendant detained *inter alia* on a *Capias Utlegatum* upon Meſne Proceſs, was diſcharged at the Seſſions, on *Stat.* 10 *Geo.* 2. *for Relief of inſolvent Debtors;* and being now arreſted by a renewed *Capias Utlegatum,* it was moved that he might be diſcharged, on giving a Warrant to appear. Granted, without Coſts. *Hil.* 11 *Geo.* 2. *C. B.* *Hand* againſt *Kelly.*

Oyer.

See **Error** 13.

Oyer muſt be demanded before the Rule to plead is out.

1. **Debt** on a Bond. The Defendant lived at *York*, and before his Attorney could get Inſtructions from him, the Rule to plead was out: After this, but before a Plea was demanded, he craved Oyer, which the Plaintiff's Attorney refuſed to give him. Motion for Oyer on Affidavit of this Matter, and that Oyer was not prayed for Delay, but only to enable the Defendant to plead Payment according to the Fact. Motion denied, Oyer not being demanded before the Rule to plead was out. *Hil.* 7 *Geo.* 2. *C. B. Hartley* againſt *Varley*. The like Reſolution in Debt on a Bail-Bond laid in *Northumberland*, *Trin.* 13, 14 *Geo.* 2. *C. B. Hargrave* againſt *Cooke*.

Oyer of an Original denied.

2. **Plea.** Tender *ante diem impetrationis brevis originalis*. Replication, an Original ſued out before the Tender: Motion for Oyer of the Original, denied. *Trin.* 11, 12 *Geo.* 2. *C. B. Ford* againſt *Burnham*. Serjeant *Prat* (afterwards Chief Juſtice *B. R.*) on being refuſed Oyer of an Original in *C. B.* tendered a Bill of Exceptions, *ut audivi*. It is never denied in *B. R.*

Debt on Bond for Performance of Articles, Plaintiff not obliged to give Oyer of the Articles; Except, *&c.*

3. **Judgment** was ſigned for Want of a Plea; the Defendant moved that the Judgment might be ſet aſide, becauſe he had demanded Oyer of the Bond and Articles, and the Plaintiff had only given Oyer of the Bond. *Curia*: The Plaintiff is not obliged to give Oyer of the Articles, he is only obliged to give Oyer of the Deed he declares upon. *Hil.* 5 *Geo.* 2. *Champion* againſt *Budd*. Motion for Oyer of an Indenture mentioned in the Condition of a Bond for Payment of 14000 *l.* granted. The Plaintiff is not bound to give Oyer of any Thing but the Deed he declares upon, unleſs by Special Rule of Court. *Mich.* 6 *Geo.* 2. *C. B. Grant*, Bart. againſt *Ewer*.

Oyer, when demanded by an Agent, ought not to be delivered to the Defendant.

4. **Debt** on a Bond againſt an Attorney as Adminiſtrator, and therefore ſued by Writ: His Agent demanded Oyer, but the Oyer was given to the Defendant himſelf. Judgment being ſigned for Want of a Plea, it was for this Reaſon ſet aſide; for, *per Curiam*, Oyer ought to have been given to the Agent. *Hil.* 4 *Geo.* 2. *C. B. Higgins* againſt *Stuart*.

Whether Judgment may be ſigned for not paying for the Copies when Oyer prayed.

5. **The** Defendant craved Oyer of the Bond, and alſo of Articles referred to by the Condition of the Bond which the Plaintiff gave him; but he refuſing to pay for the Copies, the Plaintiff ſigned Judgment.

The Court and all the Prothonotaries held, that the Plaintiff could not ſign Judgment for this Reaſon; but that he was not obliged to deliver the Copies, unleſs the Defendant would pay for them. *Mich.* 6 *Geo.* 2. *C. B. Theedam* againſt *Jackſon.*

What Time to plead after Oyer.

6. **The** Defendant has the ſame Time to plead after Oyer is given, as he had at the Time he demanded Oyer. *Eaſter* 5 *Geo.* 2. *C. B. Hammond* againſt *Horner. Mich.* 6 *Geo.* 2. *C. B. Theedam* againſt *Jackſon. Mich.* 11 *Geo.* 2. *C. B. Simpſon* againſt *Daffield.*

Paper-Books. See Error 19.

Paupers.

A Defendant can't be admitted *in Forma Pauperis.*

THE Defendant was admitted to defend *in Forma Pauperis*: A Verdict was given for the Plaintiff. It was inſiſted that the Prothonotary ſhould not allow Coſts, becauſe the Defendant was a Pauper. A Motion was made in the Treaſury for Directions to the Prothonotary to allow the Plaintiff his Coſts; and it was inſiſted, that a Defendant could not be admitted to defend *in Forma Pauperis.* Upon reading the Statute 11 *H.* 7. *c.* 12. the Judges were unanimouſly of Opinion that the Statute did not extend to Defendants; that the Defendant could not defend *in Forma Pauperis*, and that therefore the Prothonotary ſhould allow the Plaintiff his Coſts. Mr. *Clarke*, Secondary of the King's Bench, had been conſulted as to the Practice in that Court: He ſaid, he never knew a Defendant admitted *in Forma Pauperis.* Secondary *Barnes* ſaid, that when he lived with Judge *Tracy*, the Judge had been often applied to, to admit Defendants to defend *in Forma Pauperis*, but had always refuſed. *Eaſter* 8 *Geo.* 2. *C. B. Anonymus.*

Pleading.

See
- **Bankrupt** 3.
- **Coſts** 4.
- **Demurrer** 1.
- **Diſtreſs** 13.
- **Error** 12.
- **Imparlance.**
- **Oyer** 6.
- **Summons.**
- **Tender.**

Demands of Pleadings, when to be made.

1. ALL Demands of Declarations and Pleadings ſhall be made before Nine o'Clock in the Evening. *Eaſter* 10 *Geo.* 2. *C. B.*

Plaintiff after Rule to plead ſerved with an Injunction, which is not diſſolved till a Year after, he may ſign Judgment without giving a new Rule.

But not when Plaintiff delays himſelf.

2. **In** *Trinity* Term 1731. the Plaintiff gave a Rule to plead, and demanded a Plea; the ſame Term the Plaintiff was ſerved with a Special Injunction out of the Exchequer, which was diſſolved in *Trinity* Term 1732. after which the Plaintiff ſigned Judgment, without giving a new Rule to plead. It was held that the Rule given in *Trinity* Term 1731. was ſufficient, the Plaintiff being prevented from proceeding by the Injunction; and that when the Injunction was diſſolved, the Plaintiff was immediately in the ſame State as he was at the Time the Injunction was ſerved. That this Caſe differed as to this Point from that where a Plaintiff has delayed himſelf, and ſtayed Proceedings for a Term or two; for then he muſt give a new Rule to plead in that Term in which he ſigns Judgment. *Mich.* 6 *Geo.* 2. *C.B. Theedam* againſt *Jackſon.*

Order for Time to plead cures Default of the Rule to plead, and no Occaſion to call for a Plea.

3. **The** Rule to plead was by Miſtake given in the Common Pleas: The Defendant not knowing of the Miſtake, obtained a Judge's Order for enlarging the Rule to plead; but not Pleading within the Time limited by the Order, Judgment was ſigned. Motion, that it might be ſet aſide: 1. Becauſe the Rule to plead was a Nullity. 2. Becauſe the Plaintiff had not called for a Plea, after the Order; denied. Chief Juſtice: The Order cured all Defects, and by the Order the Defendant agreed to plead within the Time limited by the Order; therefore there was no Occaſion to call for a Plea. *Mich.* 7 *Geo.* 2. *B.R. Charte* v. *Withers.*

When Defendant is to plead by a Judge's Order, there is no Occaſion to give a Rule.

4. **Curia:** If a Judge gives Time to plead till the firſt Day of the ſubſequent Term, when the Time is expired, the Plaintiff in Default of a Plea may ſign Judgment, without giving a new Rule to plead. *Mich.* 7 *Geo.* 2. *C.B. Taylor* againſt *Stockham.* Proceedings on a Bail-Bond were ſtayed by a Judge's Order on Payment of Coſts, receiving a Declaration in the Original Action, and pleading the General Iſſue. *Curia:* There is no Occaſion for a Rule to plead, the Order has diſpenſed with it. *Eaſter* 10 *Geo. C.B. Dawſon* againſt *Garth.*

What Plea an iſſuable Plea within the Meaning of a Judge's Order, giving Time to plead.

5. **By** a Judge's Order, Judgment was ſet aſide on Payment of Coſts, pleading an iſſuable Plea, and accepting ſhort Notice of Trial. The Defendant pleaded, that the Plaintiff's Teſtator was attainted of Felony. Motion, that this Plea might be ſet aſide. *Curia:* Any Plea in Bar is within the Meaning of ſuch an Order. *Mich.* 4 *Geo.* 2. *B.R. Anonymus.*

6. **Debt** on an Arbitration-Bond. Judge's Order, giving Time to plead, pleading an iſſuable Plea, *&c.* Plea, no Award. Replication, an Award, and Aſſignment of a Breach. Demurrer. Motion for Leave to ſign Judgment, as the Defendant had demurred contrary to his own Agreement, but denied. *Page* Juſtice: A Demurrer is an iſſuable Plea in Law, and every Plea is ſo, but a Plea in Abatement. *Paſch.* 6 *Geo.* 2.

B. R. Dale v. *Motteram.* The Defendant obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, and taking ſhort Notice of Trial for the next Aſſizes; afterwards offered a Plea of Tender, which the Plaintiff's Attorney refuſed to accept, and ſigned Judgment. *Curia:* This is not an iſſuable Plea within the Meaning of the Judge's Order; a Tender cannot be pleaded after Time obtained to plead. *Mich.* 10 *Geo.* 2. *C. B. Davenhill* againſt *Barret.*

The Defendant cannot withdraw a Plea, but upon pleading the General Iſſue.

7. **Debt** on a Bond. Plea, *Solvit ad diem.* Motion to withdraw that Plea, and to plead that the Bond was made on the Sale of a certain Office. *Stat.* 5, 6 *Ed.* 6. *c.* 16. Cited *Bird* v. *Philips*, *Trin.* 5 *Geo.* 2. *B. R. Eades* v. *Maſon*, *Paſch.* 5 *Geo.* 2. *B. R. Curia:* Leave is never given to withdraw a Plea, but upon pleading the General Iſſue. Motion denied. *Hil.* 7 *Geo.* 2. *B. R. Law* v. *Law. Curia:* A Defendant may by the Courſe of the Court withdraw a Special Plea, and plead the General Iſſue the ſame Term, before Replication delivered, without Coſts. *Trin.* 13 *Geo.* 2. *C. B. Horſefall* againſt *Greenwood. Mich.* 5 *Geo.* 2. *C. B. Robinſon* againſt *Simmonds.* Neither ſhall the Plaintiff be allowed the Coſts of the Special Pleas at the End of the Suit. *Mich.* 13 *Geo.* 2. Leave to withdraw a Special *Plene adminiſtravit*, and to plead it generally. *Hil.* 7 *Geo.* 2. *C. B. Martindale* and *Galloway.* Motion to withdraw a Plea of Tender, and plead the General Iſſue on Payment of Coſts, denied, the Money being brought into Court. *Hil.* 7 *Gen.* 2. *C. B. Reeves* againſt *Probart.*

Leave to withdraw a Plea, and plead *De novo*, after Notice of Trial.

8. **After** Iſſue was joined, and Notice of Trial, the Defendant had Liberty to withdraw his Plea, and plead a Tender on Payment of Coſts, and taking ſhort Notice of Trial. *Paſch.* 5 *Geo.* 2. *B. R. Eads* v. *Maſon.*

Leave to change a Plea after Iſſue joined, and a Trial loſt, denied.

9. **Motion** for Leave to withdraw a Plea of *Plene adminiſtravit* generally, and to plead *Plene adminiſtravit* ſpecially, in Payment of Coſts. Rule to ſhew Cauſe. It appeared that the Plaintiff had replied; the Defendant rejoined, the Plaintiff ſur-rejoined; to which there was a Demurrer and Joinder; and that the Plaintiff had thereby loſt a Trial. *Curia:* (Chief Juſtice abſent) Diſcharge the Rule. *Eaſter* 5 *Geo.* 2. *C. B. Richards* againſt *Medlicot.*

What Plea ſhall be admitted after a regular Judgment ſet aſide.

10. **A regular** Judgment being ſet aſide on Payment of Coſts, it was moved that the Defendant might have Liberty to plead *Non aſſumpſit*, and *Non aſſumpſit infra ſex annos*; but denied: For when a Judgment is regular, and ſet aſide upon the Intreaty of the Defendant, to let him in to try the Merits of the Cauſe, it ſhall be only allowed to plead the General Iſſue, and not the Statute of Limitations, or other defenſive Plea, that goes not to the Merits. *Hil.* 10 *Geo.* 2. *C. B. Leaver* v. *Witcher*, *Comyns* 561.

11. **Motion** for Leave to withdraw a Special Plea, and leave the Plaintiff at liberty to ſign Judgment. *Curia:* It cannot be denied; for if the Defendant will not defend upon the Trial, it will be the ſame Thing as if the Plaintiff had Judgment by *Nil dicit*. *Trin.* 13 *Geo.* 2. *C. B. Fawcet* againſt *Strickland*. It will not, if a Writ of Error be brought; for in the one Caſe the Plaintiff will have Bail, in the other not.

Defendant may withdraw his Special Plea, and let the Plaintiff take Judgment.

12. **Motion** that the Defendant might have Leave to plead a Tender as of the laſt Term, notwithſtanding a general Imparlance given by the Plaintiff. It was objected, that this Application came too late; it ſhould have been made on the firſt Day of the Term. *Curia:* He may apply at any Time within the firſt four Days of the Term. Granted. *Hil.* 12 *Geo.* 2. *C. B. King* againſt *Nichols*.

Application to plead a Tender as of laſt Term, may be made in the firſt four Days of the Term.

13. **Caſe** *Sur aſſumpſit*, on a Promiſſory Note dated 22 *Feb.* 1728. payable at Inſtalments; the laſt of which would not be till 1732. and the Defendant *eiſdem die & anno* being ſo indebted, promiſed to pay, *&c.* Plea, that the Defendant became a Bankrupt 11 *Mar.* 1728. (which was before the Money due upon the firſt Inſtalment); that the Cauſe of Action accrued before he became Bankrupt; and concludes, *Et hoc paratus eſt verificare*. Demurrer; for that the Defendant ought to have concluded to the Country. Judgment for the Plaintiff. *Mich.* 5 *Geo.* 2. *B. R. Burden* v. *Tomling*. *Britton* v. *Laſſel*. *Mich.* 2 *Geo.* 2. *in Scacc. Miles* v. *Williams*. *Tempore Macclesfield* C. J. *Bugg* v. *Lacey*, 6 *Ann.* *Fuller* v. *Burden*, *Hil.* 4 *Geo.* 2. *C. B. Poole* v. *Broadfield*, *Eaſter* 7 *Geo.* 2. *C. B.*

Plea of Bankruptcy ought to conclude to the Country.

14. **Treſpaſs** for Taking and Impounding a Gelding at *S.* Plea, that the Place where, *&c.* is called *W.* containing 1000 Acres in *S.* of which the Bailiff and Burgeſſes of *S.* were ſeiſed in Fee; and the Defendants, as their Servants, and by their Command, took the Cattle, Damage Feaſant. Replication, *De injuria ſua propria*, generally. Demurrer; for that the Plaintiff did not traverſe. Judgment for the Defendants; 1. Becauſe ſeveral Things are put in Iſſue. 8 *Co.* 67. *a.* 2. Becauſe where Intereſt is in Land, or claimed out of Land, the Plaintiff cannot reply *De injuria ſua propria*. *Trin.* 11 *Geo.* 2. *C. B. Cockerel* v. *Armſtrong*, *Comyns* 582.

Where *De injuria ſua propria* is not a good Replication in Treſpaſs.

15. **Caſe** *Sur aſſumpſit*. Plea, *Non aſſumpſit infra ſex annos*, *&c.* Replication, a *Latitat* ſued out and continued; and that the Defendant undertook within ſix Years next before the ſuing out of the *Latitat*. Rejoinder, that he did not undertake, *&c.* and concludes to the Country. The Plaintiff ſigned Judgment, becauſe the Rejoinder was not ſigned by Counſel: But it was held not to be neceſſary; and therefore Judgment was ſet aſide, with Coſts. *Paſch.* 6 *Geo.* 2. *B. R. Anonymus*.

When Pleas not to be ſigned by Counſel.

Plea by an Attorney of another Court a Nullity.

16. **The** Defendant pleaded by an Attorney of another Court; whereupon the Plaintiff looking upon the Plea as a Nullity, ſigned Judgment. Which the Court held to be regular. *Eaſter* 12 *Geo.* 2. *C. B.* *Turner* againſt *Williams*.

Double Pleas allowed.

17. **Leave** to plead *Non aſſumpſit*, and *Non aſſumpſit infra ſex annos*. *Eaſter* 5 *Geo.* 2. *C. B.* *Clark* againſt *Bolton*, *Goodal* againſt *Moore*. This Double Plea had been denied ſeveral Times, *viz.* *Eaſter* 4 *Geo.* 2. *C. B.* *Welpdale* againſt *Atkinſon*, *Hottenville* againſt *Bambridge*. *Mich.* 4 *Geo.* 2. *C. B.* *Oley* againſt *Andrews*.

18. **Leave** to plead *Non aſſumpſit* to the firſt Count, to bring Money into Court, and plead *Non aſſumpſit infra ſex annos* to the reſt of the Declaration. *Mich.* 11 *Geo.* 1. *C. B.* *Dun* againſt *Holditch*.

19. **Caſe** *Sur aſſumpſit*, on a Promiſſory Note againſt *Sawbridge*, one of the *South-Sea* Directors, and another. Leave given to plead treble, *viz.* *Non aſſumpſit*, *Non aſſumpſit infra ſex annos*, and the *Stat.* 7 *Geo.* 1. which veſts the Eſtates of the Directors in Truſtees, *&c.* (Chief Juſtice abſent.) *Trin.* 5 *Geo.* 2. *B. R.* *Anonymus*.

20. **Caſe** *Sur* Mutual Promiſes: Leave to plead *Non aſſumpſit*, and Infancy in the Plaintiff. *Hil.* 3 *Geo.* 2. *B. R.* *Holt* and *Ward*. Leave to plead *Non aſſumpſit*, *& infra ætatem*. *Trin.* 6, 7 *Geo.* 2. *C. B.* *Brewer* againſt *Gee*.

21. *Non aſſumpſit* and *Plene adminiſtravit* allowed, on Affidavit that the Defendant had fully adminiſtred. *Mich.* 8 *Geo.* 2. *C. B.* *Miſaubin* and *Coſta*. Denied, for want of ſuch Affidavit. *Mich.* 8 *Geo.* 2. *C. B.* *Heethfield* againſt *Allen*.

22. *Non aſſumpſit*, and that the Defendant was diſcharged under the inſolvent Debtors Act, allowed. *Eaſter* 12 *Geo.* 2. *C. B.* *Jones* againſt *Body*.

23. *Non eſt factum* and *Plene adminiſtravit* allowed. *Trin.* 5, 6 *Geo.* 2. *C. B.* *Melborne* againſt *Prudom*.

24. **Special** *Plene adminiſtravit*, and a Set-off of a mutual Debt allowed. *Trin.* 14, 15 *Geo.* 2. *C. B.* *Coſens* againſt *Hetherington*.

25. **Not Guilty**, and the Statute of Limitations, allowed. 4 *Geo.* 2. *B. R.* *Decoſta* againſt *Carteret*.

26. **Not Guilty**, and *liberum tenementum*, allowed. *Trin.* 10 *Geo.* 2. *C. B.* *Stibbs* againſt *Neeve*.

27. **Damage-feaſant**, and a Demiſe from the Defendant to the Plaintiff, allowed. *Eaſter* 11 *Geo.* 2. *C. B.* *Church* againſt *Fendal*.

28. **A Diſtreſs** for Damage-feaſant and for Rent-Arrear allowed. *Mich.* 11 *Geo.* 2. *C. B.* *Baines* againſt *Lutwiche*.

29. **Replevin.** No Property in the Plaintiff, and a Diſtreſs for Rent-Arrear, allowed. *Mich.* 10 *Geo.* 2. *C. B.* *Peard* againſt *Spinks*.

Double Pleas diſallowed.

30. *Non aſſumpſit* and a Tender denied, as inconſiſtent. *Eaſter* 6 *Geo.* 2. *B. R.* *Anonymus*.

31. *Non aſſumpſit*, and a Diſcharge under a Commiſſion of Bankruptcy. *Hil.* 2 *Geo.* 2. *Newman* againſt *Chandler*.

32. *Non aſſumpſit*; *Actio non accrevit infra ſex annos*; and that the Plaintiff was a Bankrupt. Denied: The laſt Plea is contradictory to the firſt. *Trin.* 10 *Geo.* 2. *C. B. Bourne* againſt *Butler.*

33. *Non aſſumpſit* and a Releaſe denied. *Mich.* 6 *Geo.* 2. *C. B. Gibſon* againſt *Cole.*

34. *Non aſſumpſit* and a Mutual Debt denied. *Curia:* You may either plead the Set-off alone, or ſet off the Debt under *Non aſſumpſit. Eaſter* 8 *Geo.* 2. *Jarrat* againſt *Robinſon.*

35. *Nil debet* and *Nil habuit in tenementis* denied, becauſe the latter may be given in Evidence on the General Iſſue. *Trin.* 8, 9 *Geo.* 2. *C. B. Marſhal* againſt *Lawrence.*

36. **Debt** on a Bond. Leave to plead *Solvit ad diem*, and that the Bond was delivered as an Eſcrow. Denied, no Affidavit being made of the Payment. *Trin.* 10 *Geo.* 2. *C. B. Bunn* againſt *Lucas.*

37. **Not Guilty**, and that the Defendant had made Satisfaction, denied. *Hil.* 7 *Geo.* 2. *C. B. Durſey* againſt *Cole.*

38. *Liberum tenementum*, and a Juſtification of pulling down a Wear as a Nuſance, denied. *Trin.* 6, 7 *Geo.* 2. *C. B. Halſey* againſt *Feltham.*

39. **Not Guilty**, and a Juſtification, denied. *Hil.* 10 *Geo.* 2. *C. B. Barnet* againſt *Greaves.*

40. *Solvit ad diem* and *Riens per diſcent* denied, for want of an Affidavit as to the latter. *Mich.* 8 *Geo.* 2. *C. B. Burgeſſes of Wisbetch* againſt *Frier.*

41. **In** Debt on a penal Statute, double Plea is not to be allowed. *Eaſter* 10 *Geo.* 2. *C. B. Cornwal* againſt *Caſwell.*

Leave to plead a treble Plea, after Time given to plead, Pleading iſſuably.

42. **The** Defendant, after he had obtained a Judge's Order for Time to plead, pleading an iſſuable Plea, moved for Leave to plead a treble Plea: Which was granted. *Mich.* 10 *Geo.* 2. *C. B. Leighton* againſt *Leighton.*

Rule to plead double, after Money brought into Court, diſcharged.

43. **The** Defendant, after he had paid Money into Court on the common Rule, had got a Rule for Leave to plead double, *viz. Non aſſumpſit*, and *Non aſſumpſit infra ſex annos:* But this laſt Rule was ſet aſide, as obtained by Surprize; for on the firſt Rule nothing could be pleaded but the General Iſſue. *Eaſter* 10 *Geo.* 2. *C. B. Buckly* againſt *Warren.*

After a ſingle Plea, can't add another Plea.

44. **Plea**, *Non aſſumpſit infra ſex annos.* Motion for Leave to add the General Iſſue to this Plea, denied. *Hil.* 8 *Geo.* 2. *C. B. Peirſon* againſt *Ives. Long* againſt *Lingwood. Hil.* 10 *Geo.* 2. *Nevil* againſt *Fiſher.*

When may move for Leave to plead double.

45. **The** Defendant is not to move for Leave to plead Double, before he has appeared. *Trin.* 7, 8 *Geo.* 2. *C. B. Benn* againſt *Gery.* The Defendant may apply for Leave to plead double at any Time before Judgment, though the Rule to plead be out. *Mich.* 7 *Geo.* 2. *C. B. King* againſt *Boſwell.*

On a double Plea, if either be found for the Defendant, the Plaintiff can't have Judgment.

46. **Plea**, *Non aſſumpſit*, and *Non aſſumpſit infra ſex annos.* Replication, An Original. Rejoinder, *Nul tiel record.* Iſſue. Judgment for the Plaintiff, and Inquiry executed, without proceeding upon the firſt Plea: But the Writ of Inquiry was ſet aſide; for if either Iſſue be found for the Defendant, the Plaintiff cannot have Judgment. *Hil.* 7 *Geo.* 2. *C. B.* Afterwards the Plaintiff proceeded to Trial on the *Non aſſumpſit*, but was nonſuited; and then he executed a Writ of Inquiry on the ſecond Iſſue, but it was ſet aſide. *Mich.* 8 *Geo.* 2. *C. B. Prior* againſt *The Earl of Ilay.*

Poſtea.

See **Amendment** 14.

Loſs of a *Poſtea*, how helped.

THE *Poſtea* being loſt by Accident, upon an Affidavit that the Record of *Niſi Prius* agreed with the Roll, it was ordered that a new *Diſtringas* and *Niſi Prius* Roll ſhould be made out, and the Verdict indorſed upon it according to the Notes taken by the Aſſociate. *Trin.* 6 *Geo.* 2. *B. R. Derby* v. *Gould.* Cited *Vent.* 92. *Rex* v. *Bolton*, *Hil.* 5 *Geo.* 1. *Needham* v. *Granoe*, *Trin.* 9 *Geo.* 1.

Priſoner.

See **Outlawry** 9.

Declaration not a ſufficient Cauſe to detain a Priſoner in the Cuſtody of the Marſhal, unleſs Affidavit, *&c.*

1. NO Declaration, whereby any Priſoner ſhall be charged in the Cuſtody of the Marſhal, ſhall be ſufficient Cauſe of detaining ſuch Priſoner in Cuſtody, unleſs an Affidavit that the Plaintiff's Cauſe of Action againſt ſuch Priſoner does amount to 10 *l.* or upwards, ſhall be firſt made and filed with the Clerk of the Rules of this Court, and the Sum ſpecified in ſuch Affidavit ſhall be indorſed by him upon ſuch Declaration, before leaving thereof with the Turnkey. *Eaſter* 15 *Geo.* 2. *B. R.*

Priſoner diſcharged, not being paid the 2 *s.* 4 *d. per* Week, on the very Day.

2. **The** Plaintiff had undertaken to pay the Defendant, who was in Execution, 2 *s.* 4 *d. per* Week, on the Statute 2 *Geo.* 2. The Money was to be paid on the *Thurſday*; the Plaintiff gave the Money to his Servant, to deliver it to the Defendant on that Day; but the Servant forgot it, and did not go with it till Seven o'Clock

o'Clock the next Morning, when the Defendant refuſed to accept it. Upon Motion in Court, the Defendant was diſcharged out of Cuſtody. *Mich.* 5 *Geo.* *B. R.* *Anonymus.*

3. The Allowance was payable on a *Monday*; the Plaintiff made Default; the Defendant petitioned to be diſcharged; but it appearing that the Plaintiff had tendered the Allowance on the *Tueſday*, the Defendant was remanded. *Eaſter* 6 *Geo.* 2. *C. B. Beech* againſt *Paxton.* The like Order, where the Allowance being payable on a *Tueſday*, was tendered on the *Friday*, and refuſed by the Defendant. *Mich.* 7 *Geo.* 2. *C. B. Shaw* againſt *Gimbert.*

Priſoner detained on two Executions ſhall be allowed 2 *s.* 4 *d.* *per* Week from each Plaintiff.

4. A Defendant was detained in Execution, and had the Allowance of 2 *s.* 4 *d.* *per* Week. Another Plaintiff charged him in Execution, and inſiſting to detain him, it was held that he ſhould alſo allow him 2 *s.* 4 *d.* *per* Week. *Hil.* 10 *Geo.* 2. *C. B. Mendez* againſt *Wolfe.*

Defendant and his Wife, Priſoners, allowed 2 *s.* 4 *d.* a Week each.

5. The Defendant and his Wife being in Execution, and petitioning to be diſcharged, the Plaintiff offered to pay them the Allowance. *Curia:* You muſt pay each of them 2 *s.* 4 *d.* *per* Week. Then the Plaintiff offered to pay one, and diſcharge the other. *Curia:* You muſt diſcharge both, or neither; whereupon the Plaintiff paid them 4 *s.* 8 *d.* and gave his Note to continue it. *Hil.* 9 *Geo.* 2. *C. B. Auſtin* againſt *King* and his Wife.

After Priſoner diſcharged by Virtue of the Statute, the Plaintiff can't bring Debt on the Judgment.

6. The Defendant being in Execution, was diſcharged by Virtue of the Act for Relief of Debtors, with reſpect to the Impriſonment of their Perſons: After which the Plaintiff brought an Action of Debt upon the Judgment. *Curia:* The Judgment by the Act ſubſiſts, but only ſo as to intitle the Plaintiff to take out Execution againſt the Defendant's Effects, if the Defendant ſhould after the Diſcharge have any; but not ſo as to intitle the Plaintiff to have an Action of Debt upon it; therefore let the Proceedings be ſtayed. *Hil.* 9 *Geo.* 2. *C. B. Roberts* againſt *Hamond.*

Priſoner by removing himſelf to another Priſon, loſes the Allowance.

7. The Defendant being in Execution in the Priſon of the Palace Court, and having the Allowance of 2 *s.* 4 *d.* *per* Week, removed himſelf by *Habeas Corpus* to the Fleet, and now moved to be diſcharged for Non-payment of the Allowance. Denied. *Curia:* The Defendant has loſt the Benefit of the Act by removing himſelf, and could only petition and be diſcharged by the Court out of which the Petition iſſued. *Trin.* 6, 7 *Geo.* 2. *C. B. Greenſall* againſt *Cooper.*

Priſoner diſcharged for Non-payment of the Allowance by the Plaintiff's Executor.

8. The Defendant being in Execution, the Plaintiff had undertaken to allow him 2 *s.* 4 *d.* *per* Week; but dying, his Executor did not continue the Allowance. Upon the Defendant's Petition a Rule was made for the Executor to ſhew Cauſe why the Defendant ſhould not be diſcharged; which afterwards was made abſolute, without Oppoſition. *Curia:* The Words of the Act are general; the Executor is

now the Creditor, and intitled to the Benefit of the Aſſignment of the Defendant's Effects. *Mich.* 9 *Geo.* 2. *C. B. Tidmarſh* againſt *Procter.*

Priſoner taking the Benefit of the Inſolvent Debtors Act, obliged to give Notice to an Indorſee of a Bill of Exchange, tho' he has no Knowledge that the Bill was indorſed to him.

9. **Caſe** *Sur aſſumpſit*, by the Indorſee of a Bill of Exchange againſt the Drawer. Plea, a Diſcharge under the Inſolvent Debtors Act. Replication, that the Plaintiff lived within ten Miles of the Place where the Plaintiff was impriſoned, but had no Notice given him purſuant to the Statute. Rejoinder, that the Defendant did not know that the Bill of Exchange was indorſed to the Plaintiff. Demurrer. Judgment for the Plaintiff. The Defendant ought to have given Notice to the Indorſee, tho' the Indorſee had not given the Defendant Notice of the Indorſement, for before ſuch Notice by the Indorſee he was certainly a Creditor. In caſe a Creditor die, leaving an Executor, it may be difficult for the Priſoner to give him Notice; but undoubtedly he muſt before he can be diſcharged. *Hil.* 7 *Geo.* 2. *B.R. Crumpton* v. *Den.*

No Need of an Affidavit on delivering a Declaration againſt a Priſoner, where there is an Affidavit upon the Writ, whereupon the Defendant was arreſted.

10. **The** Defendant was arreſted upon a Proceſs out of the Court of King's Bench, and committed for want of Bail: He was afterwards removed by *Habeas Corpus* to the *Fleet*, where the Plaintiff charged him with a Declaration, without making an Affidavit of the Debt, filing it with the Prothonotary, and marking the Sum ſworn to upon the Declaration. The Defendant moved to be diſcharged upon a common Appearance. Denied; there being an Affidavit made of the Debt upon the taking out the Writ in the King's Bench, upon which the Defendant was arreſted, wherefore was no Need of an Affidavit upon delivering the Declaration; but in caſe the Defendant had been a Priſoner at the Suit of another Plaintiff, and the Declaration had come in as a new Charge, there muſt have been an Affidavit. *Mich.* 11 *Geo.* 2. *C. B. Sampſon* againſt *Warren.*

When a Declaration is delivered as a new Charge, the Declaration indorſed by the Prothonotary ſhould be delivered, and not a Copy.

11. **The** Plaintiff made an Affidavit of his Debt, in order to charge the Defendant, who was a Priſoner in the *Fleet*; and the Sum ſworn was indorſed by the Prothonotary on the Declaration, purſuant to the Rule of *Hil.* 8 *Geo.* 2. The Attorney delivered a Copy of this Declaration and Indorſement. *Curia:* He ſhould have delivered the original Declaration and Indorſement. Defendant diſcharged. *Hil.* 13 *Geo.* 2. *C. B. Newhall* againſt *James.*

Declaration againſt Priſoner in a Country-Gaol may be entered with Prothonotary any Time before Rule to plead.

12. **Declaration** delivered againſt a Priſoner in the County-Gaol of *Northumberland.* Motion to diſcharge him, for that the Declaration was not entered with the Prothonotary before it was delivered. Denied. *Curia:* It is ſufficient if it be entered at any Time before a Rule to plead be given. *Hil.* 8 *Geo.* 2. *Strickland* againſt *Hodgſon.*

13. **Declaration** againſt a Priſoner of *Eaſter* Term; Judgment ſigned in *Michaelmas* Vacation; *Superſedeas* ordered. *Curia:* The three Terms are always taken to be incluſive of the Term wherein the Declaration is delivered; and unleſs the Plaintiff ſigns final Judgment within the third Term, he is too late. *Hil.* 11 *Geo.* 2. *C. B. Davis* againſt *Hall.* But if it is out of the Plaintiff's Power to obtain Judgment in three Terms, as where the Court takes Time to conſider upon a Demurrer or Special Verdict, or where the Cauſe is tried in a County in which the Aſſizes are held but once a Year, the Defendant will not be intitled to be diſcharged. *Mich.* 13 *Geo.* 2. *C. B. Huggins* againſt *Bambridge.*

Final Judgment muſt be ſigned within the third Term.

14. **If** a Defendant be diſcharged for want of the Plaintiff's Proceeding to Judgment, the Plaintiff after Judgment may take the Defendant in Execution thereon, and the Defendant ſhall not be diſcharged; but if the Plaintiff proceed to Judgment, and the Defendant is diſcharged for want of the Plaintiff's Proceeding to Execution, the Defendant ſhall be totally diſcharged, and cannot be afterwards taken in Execution on ſuch Judgment. *Mich.* 10 *Geo.* 2. *C. B. Clarke* againſt *Venner.*

Priſoner diſcharged for Default of being charged in Execution, ſhall not be taken in Execution again.

15. **A Priſoner** charged *inter alia* with an Attachment for a Contempt, petitioned for a Day-Rule. *Curia:* He is not intitled to it; this is a criminal Proceſs. *Mich.* 5 *Geo.* 2. *C. B. Theedam's* Caſe.

Priſoner for a Contempt not intitled to a Day-Rule.

Privilege. See **Ambaſſadors.** **Arreſt** 1, 2.

Proceſs.

See **Baron and Feme** 3.
County Palatine 1, 2, 3.
Irregularity 1.
Notices 3.

1. **THE** Day mentioned in the Notice, ſubſcribed under Proceſs, muſt be the Eſſoin-Day, though it be a *Sunday.* *Trin.* 6, 7 *Geo.* 2. *C. B. Alſop* againſt *Bagot.* *Hil.* 7 *Geo.* 2. *C. B. Jenner* againſt *Catridge*, *Green* againſt *Watkins.*

Notice under Proceſs muſt be for the Eſſoin-Day, and not the Appearance-Day.

2. **Notice** to appear on the 20th Day of *October*, not ſaying *next*, held to be bad. *Mich.* 12 *Geo.* 2. *C. B. White* againſt *Waſhington.*

Notice to appear 20 *Oct.* not ſaying *next*, bad.

3. **Action** againſt Baron and Feme: The Wife was not ſerved with a Copy of the Proceſs. *Curia:* It is not neceſſary to ſerve the Wife; on ſerving the Husband the Plaintiff may appear for both, if the Defendants

No Occaſion to ſerve Wife with Proceſs.

do not appear. *Eaſter* 8 *Geo.* 2. *C. B. Jucomb* againſt *Love* and his Wife. *Eaſter* 12 *Geo.* 2. *C. B. Collins* againſt *Shapland* and his Wife.

Proceſs againſt two Defendants, Executors, both muſt be ſerved.

4. **Proceſs** againſt two Defendants, Executors, and only one ſerved. *Curia:* The other Defendant muſt be ſerved before you can proceed, or you may outlaw him. *Trin.* 8, 9 *Geo.* 2. *C. B. Worley* againſt *Bull* and another, Executors.

Proceſs ſerved at Six o'Clock in the Afternoon of the Day of the Return, good Service.

5. **Motion** that a Judgment might be ſet aſide, for that the Proceſs was ſerved on the Appearance-Day of the Return at Six o'Clock in the Afternoon, after the Court was riſen. *Curia:* The Proceſs is well ſerved, there is no Fraction of a Day. *Eaſter* 1 *Geo.* 2. *C. B. Mathews* againſt *Partridge*.

On Service of Proceſs, Writ need not be ſhewn.

6. **Motion** that the Judgment might be ſet aſide; becauſe when the Defendant was ſerved with a Copy of the Proceſs, the Writ itſelf was not ſhewed to him. *Curia:* It is good Service without ſhewing the Writ; Motion denied. *Hil.* 12 *Geo.* 2. *C. B. Panchand* againſt *Woolley*.

A complete Copy of the Proceſs muſt be ſerved.

7. **Proceſs** againſt ſeveral Defendants: In the Copy ſerved upon the Defendant *Standiſh*, the other Defendants were not named. *Curia:* This is wrong, a complete Copy of the whole Proceſs muſt be ſerved. *Trin.* 7, 8 *Geo.* 2. *C. B. Cutcliffe* againſt *Standiſh*.

Proceſs ſerved within a Liberty.

8. **Motion** to ſtay Proceedings, becauſe the Defendant had been ſerved with a Copy of Proceſs directed to the Sheriff of *Suffolk*, within the Liberty of *Bury St. Edmunds*. Denied. *Hil.* 7 *Geo.* 2. *C. B. Hall* againſt *Wilby*.

Copy of Proceſs put thro' the Crevice of a Door, the Defendant being within-ſide.

9. **The** following Service of Proceſs was held to be good: The Defendant ſkulk'd and concealed himſelf, and was in a public Office with the Door lock'd; the Plaintiff's Attorney ſaw him through the Key-hole of the Door, and he was very near the Door; thereupon the Plaintiff's Attorney told him aloud that he had a Copy of a Writ for him, put the Copy through a Crevice in the Door, and told him what the Paper was. *Curia:* This is good Service. *Trin.* 7, 8 *Geo.* 2. *C. B. Smith* againſt *Wintle*.

Prochein Amy. See **Coſts** 8.

Promiſſory Notes.

1. ASſumpſit on a Promiſſory Note by the Defendant for 50 *l.* for Value received, payable to *Welch* or Order, who indorſed it to the Plaintiff; in Conſideration whereof the Defendant promiſed to pay, *&c.* Demurrer; for that no Notice is alledged in the Declaration to have been given to the Defendant of the Indorſement; and relied on 2 *Mod. Ca.* 42. *Lawrence* and *Jacob*; where, after Verdict, the Judgment was reverſed in Error for that Cauſe. *Sed non allocatur*; for that Caſe is miſreported, and the Judgment was affirmed; and on the Authority of that Caſe, and on the Reaſon of the Thing; for the Defendant by his Demurrer admits, that in Conſideration of the Premiſſes, (*viz.*) his making the indorſable Note, and the Indorſing it to the Plaintiff, the Defendant aſſumed to pay the Money according to the Tenor of the Note, Judgment for the Plaintiff. *Paſch.* 10 *Geo.* 2. *C. B. Skip* v. *Hook*, *Comyns* 563.

In an Action by an Indorſee againſt the Drawer of a Promiſſory Note, not neceſſary to alledge Notice of the Indorſement.

2. **Caſe** *Sur aſſumpſit*, on a Promiſſory Note againſt the Indorſor. At *Niſi Prius* it was doubted, whether the Plaintiff ought not to prove a Demand of the Drawer before the Action brought: The Matter on Proof was left to the Jury, whether a Demand was made or not? On Motion for a new Trial, Judge *Forteſcue* mentioned the Caſe of *Davis* and *Maſon*, 1 *Geo.* 2. *C. B.* wherein it was agreed by the Court that there ought to be a Demand of the Drawer, for the Indorſor undertook conditionally only, if the Drawer did not pay; Indeed if a Note be forged, *Holt* C. J. held, the Indorſor liable, tho' no Demand: And indeed no Demand can be; for when a Note is forged, there is no Drawer. So on a Note payable to a Man or Bearer, no Demand need be from him to whom it is made payable. But a new Trial was denied, for the Evidence of the Demand was left to the Jury, who were the proper Judges of that Fact, and knew beſt the Courſe of Dealing. *Trin.* 11 *Geo.* 2. *C. B. Pardo* v. *Fuller*, *Comyns* 579.

Whether on an Action againſt the Indorſor of a Promiſſory Note, a Demand on the Drawer need be proved.

3. **Caſe** *Sur aſſumpſit*, by the Indorſee againſt the Drawer of a Promiſſory Note. It was held, that Evidence of the Indorſor's acknowledging that his Name indorſed on the Note was his Hand-writing, is not ſufficient; his Hand muſt be proved. *Mich.* 6 *Geo.* 2. *C. B. Hemings* againſt *Robinſon*.

The Indorſor's acknowledging his Hand not ſufficient Evidence againſt the Drawer.

Quakers. See **Attachment** 1. **Attornies** 1.

Recoveries.

See **Antient Demeſne** 2.

Præcipes for Recoveries to be entered in the Office.

1. **A**LL Præcipes for Recoveries are to be entred in the Office on the Remembrance of each Prothonotary to whom they belong, and no Remembrance will be lent out for that Purpoſe. Publick Notice, *Trin.* 10 *Geo.* 2. *C.B.*

No Infant to be a Commiſſioner for taking Warrants of Attorney for Recoveries.

2. **No** one ſhall be a Commiſſioner for taking Warrants of Attorney for Common Recoveries, unleſs he be of the full Age of Twenty-one Years. *Mich.* 16 *Geo.* 2. *C.B.*

Common Recoveries ſuffered without the Surrender, *&c.* of Leaſes for Lives, *&c.* valid.

3. **Whereas** ſeveral Leaſes have been heretofore, and are hereafter likely to be made, of Honors, Caſtles, Manors, Lands, Tenements and Hereditaments, for one or more Life or Lives, under particular Rents; and whereas procuring Surrenders of ſuch Freehold Leaſes, or the Tenants thereof to join, in order to make Tenants to the Writs of Entry, or other Writs for ſuffering Common Recoveries, frequently occaſions great Trouble, Difficulty and Expence to Tenants in Tail, and the ſame cannot in many Caſes be obtained, by reaſon of the Incertainty in whom the legal Eſtate of Freehold under ſuch Leaſes is veſted, and alſo by reaſon of the Diſabilities and Incapacities of ſuch Leſſees or Perſons claiming under them, by Means whereof Purchaſes and Family Settlements are often delayed, and may be in great Danger of being defeated; for Remedy whereof it is enacted, That all Common Recoveries ſuffered or to be ſuffered in any Court having Juriſdiction of the ſame, of any Honours, Caſtles, Manors, Lands, Tenements or Hereditaments, without any Surrender of ſuch Leaſe or Leaſes, or without the Concurrence of, or any Conveyance or Aſſurance from ſuch Leſſee or Leſſees, or other Perſon or Perſons claiming under ſuch Leſſee or Leſſees, in order to make good Tenants to the Writs of Entry, or other Writs, whereupon ſuch Recoveries have been or ſhall be had or ſuffered, ſhall be as valid and effectual in Law, to all Intents and Purpoſes whatſoever, as if ſuch Leſſee or Leſſees, or any other Perſon or Perſons claiming under him, her or them, had conveyed or joined in conveying, or ſhall convey or join in conveying a good Eſtate of Freehold to ſuch Perſon or Perſons as has or have been, or ſhall become Tenant or Tenants to ſuch Writs of Entry, or other Writs whereupon ſuch Common Recoveries have been or ſhall be ſuffered. *Stat.* 14 *Geo.* 2. *c.* 20. §. 1.

4. **Provided** that this Act ſhall not extend to make any Common Recoveries valid; unleſs the Perſon or Perſons intitled to the firſt Eſtate for Life, or other greater Eſtate, in caſe there be no ſuch Eſtate for Life in Being, in Reverſion or Remainder, next after the Expiration of ſuch Leaſes, has or have by ſome lawful Act or Means conveyed or aſſured, or joined in conveying or aſſuring, or ſhall by ſome lawful Act or Means convey or aſſure, or join in conveying or aſſuring an Eſtate for Life, at the leaſt, to ſuch Perſon or Perſons, as has or have been, or ſhall become Tenant or Tenants to the Writs of Entry, or other Writs whereupon ſuch Common Recoveries have been or ſhall be ſuffered. *Same Stat.* §. 2.

But not unleſs the Perſon next in Reverſion or Remainder, after ſuch Leaſe, ſhall convey, *&c.* to the Tenants to the Præcipe.

5. **Provided** alſo, That this Act ſhall not extend to prejudice the Eſtate of ſuch Leſſee or Leſſees, or any Perſon or Perſons claiming any Intereſt under ſuch Leſſee or Leſſees. *Same Stat.* §. 3.

Not to prejudice the Eſtate of ſuch Leſſees.

6. **And** whereas by the Default or Neglect of Perſons employed in ſuffering Common Recoveries, it has happened, and may happen, that ſuch Recoveries are not entered on Record, whereby Purchaſers for a valuable Conſideration may be defeated of their juſt Rights; for Remedy whereof it is enacted, That where any Perſon hath purchaſed, or ſhall purchaſe, for a valuable Conſideration, any Eſtate or Eſtates in Lands, Tenements or Hereditaments, whereof a Recovery or Recoveries is, are, or were neceſſary to be ſuffered, in order to complete the Title; ſuch Perſon, and all claiming under him, having been in Poſſeſſion of the purchaſed Eſtate or Eſtates from the Time of ſuch Purchaſe, ſhall and may after the End of twenty Years from the Time of ſuch Purchaſe, produce in Evidence the Deed or Deeds making a Tenant to the Writ of Entry, or other Writ for ſuffering a Common Recovery, and declaring the Uſes of a Recovery; and the Deed or Deeds ſo produced (the Execution thereof being duly proved) ſhall in all Courts of Law and Equity be deemed and taken as a good and ſufficient Evidence for ſuch Purchaſer, and thoſe claiming under him, that ſuch Recovery was duly ſuffered and perfected according to the Purport of ſuch Deed or Deeds, in caſe no Record can be found of ſuch Recovery, or the ſame ſhould appear not to be regularly entered on Record: Provided that the Perſon or Perſons making ſuch Deed or Deeds as aforeſaid, and declaring the Uſes of a Common Recovery, had a ſufficient Eſtate and Power to make a Tenant to ſuch Writ as aforeſaid, and to ſuffer a Common Recovery. *Same Stat.* §. 4.

In what Caſe the Deed making a Tenant to the Præcipe, and declaring the Uſes, ſhall be Evidence of a Recovery ſuffered.

Provided that the Perſon making ſuch Deed had a ſufficient Eſtate.

7. **And** whereas it has frequently happened that the Deed for making the Tenant to the Writ of Entry, or other Writ for ſuffering Common Recoveries, has been loſt, or that the Fine or Deed making the Tenant to the ſaid Writ hath not been levied or executed till after Judgment given in ſuch Recovery, and the Writ of Seiſin awarded, by reaſon whereof

Doubts have ariſen, whether ſuch Recovery, for want of a proper Tenant to the Writ, is good and effectual in Law; to prevent ſuch Doubts for the future, and in order to render Common Recoveries more certain and effectual, it is enacted, That every Common Recovery already ſuffered, or hereafter to be ſuffered, ſhall, after the End of twenty Years from the Time of the ſuffering thereof, be deemed good and valid to all Intents and Purpoſes; if it appears upon the Face of ſuch Recovery, that there was a Tenant to the Writ; and if the Perſon joining in ſuch Recovery had a ſufficient Eſtate and Power to ſuffer the ſame, notwithſtanding the Deed for making the Tenant to ſuch Writ ſhould be loſt or not appear. *Same Stat.* §. 5.

Recovery after twenty Years to be deemed valid, tho' the Deed making a Tenant to the Præcipe be loſt.

If, *&c.*

Recovery good, tho' no Tenant to the Præcipe till after Judgment, *&c.*

Provided it be in the ſame Term, *&c.*

And, *&c.*

8. **Every** Recovery already ſuffered, or hereafter to be ſuffered, ſhall be deemed good and valid to all Intents and Purpoſes, notwithſtanding the Fine or Deed making the Tenant to ſuch Writ ſhould be levied or executed after the Time of the Judgment given in ſuch Recovery, and the Award of the Writ of Seiſin as aforeſaid: Provided the ſame appear to be levied or executed before the End of the Term, Great Seſſion, Seſſion or Aſſizes in which ſuch Recovery was ſuffered, and the Perſon joining in ſuch Recovery had a ſufficient Eſtate to ſuffer the ſame as aforeſaid. *Same Stat.* §. 6.

Not to extend to Recoveries already ſuffered, which have or ſhall be avoided before 16 *Jan.* 1740, *&c.*

Provided, That this Act ſhall not extend to make any ſuch Common Recovery heretofore ſuffered valid and effectual in Law, which has been avoided by any lawful Act or Means, or which ſhall hereafter be avoided by Entry duly made on or before 16 *Jan.* 1740. or by Judgment or Decree had or obtained upon ſome Action or Suit at Law or in Equity, commenced or to be commenced on or before the ſaid 16th of *January*, and proſecuted with due Diligence; but every ſuch Common Recovery ſhall remain and be of ſuch Force and Effect only, as it would have been if this Act had not been made. *Same Stat.* §. 7.

Not to affect any Queſtion in Law not hereby remedied.

9. **Provided** that nothing in this Act ſhall be conſtrued to prejudice or affect any Queſtion of Law which may ariſe upon Common Recoveries not remedied, or intended to be remedied by this Act; but all ſuch Common Recoveries ſhall remain and be of ſuch Force and Effect, as the ſame would have been if this Act had never been made, and of no other Force or Effect. *Same Stat.* §. 8.

Rent.

See **Diſtreſſes.** **Outlawry** 8.

Where a Landlord is only Tenant for Life, and dies on or before the Day the Rent becomes due, his Executors, *&c.* may, by Action on the Caſe, recover the whole, or a proportionable Part.

Whereas where any Leſſor or Landlord, having only an Eſtate for Life in the Lands, Tenements or Hereditaments demiſed, happens to die before or on the Day on which any Rent is reſerved or made payable, ſuch Rent, or any Part thereof, is not by Law recoverable by the Executors or Adminiſtrators of ſuch Leſſor or Landlord; nor is the Perſon in Reverſion intitled thereto, any other than for the Uſe and Occupation of ſuch Lands, Tenements or Hereditaments, from the Death of the Tenant for Life; of which Advantage hath been often taken by the Under-tenants, who thereby avoid paying any thing for the ſame: For Remedy whereof it is enacted, That where any Tenant for Life ſhall happen to die before or on the Day on which any Rent was reſerved or made payable, upon any Demiſe or Leaſe of any Lands, Tenements or Hereditaments, which determined on the Death of ſuch Tenant for Life, the Executors or Adminiſtrators of ſuch Tenant for Life may, in an Action on the Caſe, recover of ſuch Under-tenant of ſuch Lands, *&c.* if ſuch Tenant for Life die on the Day on which the ſame was made payable, the whole; or if before ſuch Day, then a Proportion of ſuch Rent, according to the Time ſuch Tenant for Life lived of the laſt Year or Quarter of a Year, or other Time in which the ſaid Rent was growing due as aforeſaid, making all juſt Allowances, or a proportionable Part thereof reſpectively. *Stat.* 11 *Geo.* 2. *c.* 19. §. 15.

Repleader.

No Coſts on a Repleader.

Trover. Plea, *Non aſſumpſit.* A Verdict for the Plaintiff: Which was afterwards ſet aſide, and a Repleader granted. The Defendant would not replead, but ſuffered Judgment to go by Default: Whereupon a Writ of Inquiry was executed; and the Queſtion was, whether the Prothonotary ſhould allow any Coſts for the miſtaken Proceedings? *Curia:* There can be no Coſts on a Repleader, becauſe there are Miſtakes on both Sides. *Eaſter* 8 *Geo.* 2. *Noble* againſt *Lancaſter.* Vide *Salk.* 79.

Replevin.

On granting a Replevin, a Bond to be taken, *&c.*

1. **ALL** Sheriffs, and other Officers, having Authority to grant Replevins, ſhall in every Replevin of a Diſtreſs for Rent take in their own Names from the Plaintiff, and two reſponſible Perſons as Sureties, a Bond in double the Value of the Goods diſtrained (ſuch Value to be aſcertained by the Oath of one or more credible Witneſs or Witneſſes not intereſted in the Goods or Diſtreſs, which Oath the Party granting ſuch Replevin is to adminiſter) and conditioned for proſecuting the Suit with Effect, and without Delay, and for duly returning the Goods and Chattels diſtrained, in caſe a Return ſhall be awarded before any Delivery be made of the Diſtreſs.

And aſſigned over to the Avowant, *&c.*

And ſuch Sheriff or other Officer as aforeſaid, taking any ſuch Bond, ſhall, at the Requeſt and Coſts of the Avowant or Perſon making Conuſance, aſſign ſuch Bond to the Avowant or Perſon aforeſaid, by indorſing the ſame, and atteſting it under his Hand and Seal in the Preſence of two or more credible Witneſſes; which may be done without any Stamp, provided the Aſſignment ſo indorſed be duly ſtamped before any Action brought thereupon; and if the Bond ſo taken and aſſigned be forfeited, the Avowant or Perſon making Conuſance may bring an Action, and recover thereupon in his own Name; and the Court where ſuch Action ſhall be brought, may by a Rule of the ſame Court give ſuch Relief to the Parties upon ſuch Bond as may be agreeable to Juſtice and Reaſon, and ſuch Rule ſhall have the Nature and Effect of a Defeaſance to ſuch Bond. *Stat.* 11 *Geo.* 2. *c.* 19. § 23.

Writ of ſecond Deliverance a *Superſedeas* to a *Return' Habend'*.

2. **A Writ** of ſecond Deliverance is in the Nature of a *Superſedeas* to a *Return' Habend'*, if brought before a *Return' Habend'* is executed. Not ſo after Inquiry *Fieri Facias*, or *Elegit*. *Trin.* 10 *Geo.* 2. *C. B. Anonymus.*

Proceeding on a *Re. fa. lo.* when brought by Plaintiff or Defendant.

3. **If** the Plaintiff brings a *Recordari facias loquelam*, he may have a *Pone*, *Diſtringas*, *&c.* if the Defendant does not appear: If the Defendant brings a *Recordari facias loquelam*, he files it with the Filacer, and gives a Rule to declare. *Eaſter* 7 *Geo.* . *C. B. Anonymus.*

No Need to call for a Declaration in Replevin.

4. **Replevin.** Motion that a *Non. Proſ.* might be ſet aſide, for want of calling for a Declaration. Denied; and ſaid there was no Need of calling for a Declaration. *Mich.* 5 *Geo.* 2. *C. B. Whitaker* againſt *Whitworth.*

Reſcous.

1. Motion for an Attachment for a Reſcous, upon a *Non omittas*; but denied, the Reſcous not being returned. *Trin.* 5 *Geo.* 2. *B. R. Young* v. *Cain.* Cited *Salk.* 546. *Sheder* v. *Holt. Mich.* 9 *Geo.* 1. *Grinley* v. *Foſter*, *Hil.* 11 *Geo.* 1.

No Attachment for a Reſcous, till it be returned.

2. The Defendants being taken on an Attachment for a Reſcous returned by the Sheriff, entred into a Recognizance to appear and anſwer Interrogatories. *Curia:* A Reſcous returned by the Sheriff is not a Matter traverſable, but amounts to a Conviction, and the Attachment is in the Nature of a *Capias pro fine*; the Party is to be brought into Court and fined, and not anſwer Interrogatories: Let the Recognizance be diſcharged. *Eaſter* 6 *Geo.* 2. *C. B. The King* againſt *Philips* and others.

Reſcous returned not traverſable, but in nature of a Conviction.

3. Motion to ſet a ſmall Fine on the Defendants, whom the Sheriff had returned to be Reſcuers. *Curia:* We will not ſet a Fine till after the Trial of the Action brought by the Defendants againſt the Sheriff for a falſe Return, but we will admit them to Bail; which was done accordingly. *Trin.* 6, 7 *Geo.* 2. *C. B. The King* againſt *Tyrrel* and others. Afterwards in *Eaſter* Term following the Defendants having obtained a Verdict againſt the Sheriff, the Recognizance was diſcharged.

Reſcuers admitted to Bail.

Scire Facias.

1. ALL Precipes for Writs of *Scire Facias* are to be entred in the Office on the Remembrance of each Prothonotary to whom they belong; and no Remembrances will be lent out for that Purpoſe. Publick Notice, *Trin.* 10 *Geo.* 2. *C. B.*

Precipes for *Sci. Fa.* to be entred in the Office.

2. The Plaintiff took out Execution on a Judgment of above a Year's Standing, without reviving it by *Scire Facias*. On Motion, the Plaintiff inſiſted that he had been delayed by an Injunction out of Chancery. Execution ſet aſide. *Curia:* You might have revived the Judgment by *Scire Facias*, without Breach of the Injunction. *Hil.* 6 *Geo.* 2. *C. B. Simpſon* againſt *Grey*.

A Judgment muſt be revived, tho' Plaintiff ſtayed by an Injunction.

Need not be fifteen Days between the Teſte and Return of each *Sci. Fa.*

3. **On** a Demurrer to a *Scire Facias* againſt Bail, it was held that there need not be fifteen Days between the Teſte and Return of each *Scire Facias*; if there be fifteen Days between the Teſte of the firſt, and the Return of the laſt, it is ſufficient. *Hil.* 8 *Geo.* 2. *C. B. Price* againſt *Selby*.

Sci. Fa. may be quaſhed before Plea, without Coſts.

4. **The** Plaintiff may obtain Leave to quaſh his own *Scire Facias*, without paying Coſts, at any Time before the Defendant has pleaded, even tho' he has entered an Appearance. *Mich.* 6 *Geo.* 2. *C. B. Honey* againſt *Whitehead*. *Mich.* 8 *Geo.* 2. *C. B. Pool* againſt *Broadfield*.

Sci. Fa. to revive a Judgment need not mention the Term.

5. **In** a *Scire Facias* to revive a Judgment, it is not neceſſary to mention the particular Term in which the Judgment was given. *Trin.* 7, 8 *Geo.* 2. *C. B. Newarke* againſt *Newarke*.

Sci. Fa. on Recognizance of Bail to *J. M.* the Younger, ſetting forth a Judgment recovered by him by the Name of *J. M.* without any Addition, good.

6. **Scire Facias** againſt the Defendants on a Recognizance of Bail for *Aaron Laws*, ſetting forth that they were bound to *John Matravas* the Younger, &c. and that altho' the ſaid *John Matravas* the Younger, by the Name of *Matravers*, recovered Judgment, &c. Demurrer. And it was inſiſted that the Bail was not liable, becauſe the Recognizance is to *John Matravers* the Younger, and no Averment that the Plaintiff in the Action, named *John Matravers*, without Addition, is the ſame Perſon; and if there was an Averment, it would not help. *Cro. Eliz.* 897. *Cro. Jac.* 640. *Lut.* 894, 895. Judgment for the Plaintiff: Here is ſufficient Averment, and it is not like the Caſes cited. *Trin.* 11 *Geo.* 2. *C. B. Matravas* v. *Adlam* and *Brown*, *Comyns* 573.

Sci. Fa. to revive a Judgment, where the Defendant died after the Day of *Niſi Prius*, and before the Day in Bank, muſt be general, and not ſpecial.

7. **Sci. Fa.** againſt an Executor, to revive a Judgment obtained againſt his Teſtator. Plea in Abatement, that the Teſtator died before Judgment, &c. Replication, *Stat.* 17 *Car.* 2. *c.* 8. that the Teſtator died after Verdict, and before the Day in Bank. Demurrer. Objection: The *Scire Facias* ought to have been Special; for now it ſuppoſes a Judgment againſt the Teſtator in his Life-time, and the Replication ſhews that it was after his Death. *Curia*: The Writ is good; had it been Special, there would have been a Variance, for the Judgment is entered generally, *Reſpondeat ulterius*. *Hil.* 5 *Annæ*, *B. R. Colebeck* v. *Peck*, 2 *R. Raym.* 1280. Vide *T. Raym.* 210. 1 *Mod.* 6.

On Judgment after Plea to a *Sci. Fa.* the Court may give Coſts of Suit, but not Damages, &c. for Delay of Execution.

8. **Sci. Fa.** on a Recognizance of Bail in *C. B.* Plea, *Nul tiel Record*; Replication, *Habetur tale Record*. Judgment for the Plaintiff, *Quod haberet executionem*, &c. *Conſideratum eſt etiam, quod querens recuperet verſus Defendentes* 6 *l.* 10 *s.* *pro damnis, miſis et cuſtagiis ſuis, quæ ſuſtinuit occaſione dilationis executionis præd', eidem querenti ad requiſitionem ſuam*

per Curiam hic adjudicat' juxta formam Statuti, &c. Error in *B. R.* for that by 8, 9 *W.* 3. *c.* 11. §. 3. Coſts of Suit are only given to the Plaintiff in a *Scire Facias*, if he obtains Judgment, or an Award of Execution againſt the Defendant, after Plea pleaded, or Demurrer joined: But in this Caſe the Court of *C. P.* have given Judgment *pro damnis, miſis et cuſtagiis, occaſione dilationis executionis, &c.* whereas they have no Power to give Damages for the Delay of Execution. The Court ſaid the Judgment, as to the 6 *l.* 10 *s. pro damnis, miſis et cuſtagiis*, was erroneous, and therefore they reverſed the Judgment as to that, and affirmed the Judgment as to the Adjudication of Execution, and awarded Execution, *&c. Trin.* 2 *Geo.* 2. *B. R. Henriques and others* and *The Dutch Weſt-India Company*, 2 *R. Raym.* 1532.

Judgment reverſed as to Part, and affirmed as to the Reſidue.

Scire Facias quare Executionem non, &c. See **Error** 12, 13, 14, 15.

Scire Fieri Inquiry.

A **Scire Fieri** Inquiry ſet aſide with Coſts, for want of Notice; and ruled, that for the future Notice ſhould be given. *Eaſter* 1 *Geo.* 2. *C. B. Copley* againſt *Delany. Mich.* 14 *Geo.* 2. *C. B. Tilney* againſt *Watſon.*

Notice muſt be given of a *Sci. Fi.* Inquiry.

Sequeſtration.

1. MR. *Hale* moved for a Sequeſtration *Niſi*, for want of an Anſwer, againſt the menial Servant of a Peer of the Realm, as the firſt Proceſs for a Contempt, in the ſame Manner as in the Caſe of the Peer himſelf; and though the Motion was granted by the Maſter of the Rolls, yet the Regiſter refuſed to draw it up, as thinking it againſt the Courſe of the Court. Upon which Mr. *Hale* moved it again before the Lord Chancellor, who upon reading the Statute [12 *W.* 3. *c.* 3.] granted the Motion likewiſe; it appearing to be both within the Meaning and Words of the Statute: And if it were not ſo, as it was plain, no Attachment would lie againſt their Perſons, conſequently there would be no Remedy againſt them; and they would have a greater Privilege than their Lords, if the Proceſs againſt ſuch menial Servants were to be a *Subpœna. Hil.* 1718. *Anonymus*, 1 *Williams* 535.

The firſt Proceſs of Contempt againſt a menial Servant of a Peer of the Realm, is a Sequeſtration *Niſi.*

After a Sequeſtration taken out here, and returned *Nulla bona*, a Sequeſtration may be granted againſt the Defendant in *Ireland.*

2. **Upon** a Motion for a Sequeſtration againſt the Defendant's Real and Perſonal Eſtate in *Ireland*, it was alledged, that the Plaintiff had here in *England* proceeded to a Sequeſtration, and that it would be vain to take out a Sequeſtration here, the Defendant having no Eſtate any where but in *Ireland:* That a Sequeſtration had been granted in the like Caſe, as in that of * Lord *Arglaſs* verſus *Muſchamp*, where the Court granted a Sequeſtration into *Ireland*; nay, that ſuch Proceſs had been awarded to the Governor of *North Carolina.* Lord Chancellor: The Plaintiff ought at leaſt to take out a Sequeſtration here, and upon a *Nulla bona* returned I will grant a Sequeſtration, which ſhall affect the Defendant's Eſtate in *Ireland.* The Courts of Juſtice here have a ſuperintendant Power over † thoſe in *Ireland*, and therefore Writs of Error lie in *B.R.* in *England*, to reverſe Judgments in *B.R.* in *Ireland.* [*Sed Quære* to whom the Sequeſtration againſt the Defendant's Eſtate in *Ireland* is to be directed; and if it ſhould not by an Order from Lord Chancellor, reciting the Proceedings here, and directing the Chancellor of *Ireland* to iſſue out a Sequeſtration there, for the Benefit of the Plaintiff, and towards Satiſfaction of his Demands.] But as to the Sequeſtration mentioned to be directed to the Governor of *North Carolina*, or any other of the Plantations, the Court doubted much whether ſuch Sequeſtration ſhould not be directed by the King in Council, where alone an Appeal lies from the Decree in the Plantations; for which Reaſon it ſeemed that in ſuch Caſe the Plaintiff ought to make his Application to the King in Council, and not to this Court. *Mich.* 1724. Sir *John Fryer* verſus *Bernard*, 2 *Williams* 261.

* 1 *Vern.* 135.

† 1 *Williams* 349.

Application ought to be made to the King in Council, for a Sequeſtration to the Plantations.

A Sequeſtration *Niſi* is the firſt Proceſs againſt a Peer or Member of the Houſe of Commons; but if there be a Sequeſtration *Niſi* againſt a Peer for want of an Anſwer, and the Peer puts in an Anſwer, which is inſufficient, yet the Order for a Sequeſtration ſhall not be abſolute, but a new Sequeſtration *Niſi.*

3. **A Sequeſtration** was granted unleſs Cauſe againſt the Defendant Lord *Clifford*, for want of an Anſwer; afterwards he put in an Anſwer, which being reported inſufficient, it was now moved for a Sequeſtration abſolutely, an inſufficient Anſwer being no Anſwer; and in ſuch Caſe the Plaintiff is to go on where he left off before the inſufficient Anſwer was put in. Maſter of the Rolls (in the Abſence of the Lord Chancellor): As in Caſe of a Peer, or Member of the Houſe of Commons, it is a Hardſhip upon them that a Sequeſtration, which in ſome Reſpects is in Nature of an Execution, is the firſt Proceſs; ſo when a Sequeſtration is granted againſt a Peer, *Niſi*, for want of an Anſwer, it is good Cauſe againſt ſuch Order *Niſi*, to ſhew that the Anſwer is put in, which muſt be allowed for Cauſe; and when that Anſwer is reported inſufficient, the Plaintiff muſt move again *de novo* for a Sequeſtration, *Niſi*, which *Goldsborough* the Regiſter ſaid was the Courſe of the Court. *Mich. Vac.* 1726. Lord *Clifford's* Caſe, 2 *Williams* 385.

Sheriff.

See {**Habeas Corpus** 2, 5. | **Venire Facias** 3.
{**Replevin** 1. | **Writs** 1.

Sheriff to indorſe the Attorney's, &c. Name on Warrants.

Penalty.

1. **Every** Sheriff, or other Officer, who ſhall make out any Warrant upon any Writ, Proceſs, or Execution, and ſhall not ſubſcribe or indorſe the Name of the Attorney, Clerk in Court, or Solicitor, who ſued out the ſame, ſhall forfeit 5 *l.* to be aſſeſſed as a Fine upon the Sheriff, or other Officer by the Court out of which ſuch Writ, Proceſs or Execution ſhall iſſue; one Moiety to the King, the other to the Perſon aggrieved by ſuch Omiſſion. *Stat.* 12 *Geo.* 2. *c.* 13. §. 4. See **Writs**.

Attachment againſt one who acts as Under-Sheriff, for not returning a Writ.

2. **An** Attachment was granted againſt the Sheriff, for not returning a Writ upon Affidavit of Service of the Rule upon Mr. *Benſon*, he acting as Under-Sheriff. It was objected, that he was not the Under-Sheriff. *Curia:* He acts as ſuch, and that is ſufficient; for it is difficult to know who is the real Under-Sheriff. *Mich.* 9 *Geo.* 2. *C. B. Arne* againſt *Neeler*.

Sheriff's Deputy to be entered on Record.

3. **Motion**, That the Sheriff of *Suffolk* hath uſually appointed a Deputy at *Bury* to receive and return Writs, which the preſent Sheriff refuſes to do. Rule to ſhew Cauſe why he ſhould not make a Deputy in Town, purſuant to the Rules of the Court. *Hil.* 14, 15 *Car.* 2. *Hil.* 15, 16 *Car.* 2. and *Trin.* 1 *Jac.* 2. But it was afterwards diſcharged, there being no Cauſe in Court relating to this Matter, nor any Complaint by any Suitor of the Court. Ordered, That for the future the Sheriff's Deputy be entered on Record. *Trin.* 10, 11 *Geo.* 2. *C. B. Steward of Bury* againſt *Sheriff of Suffolk, Comyns* 566.

Aſſignment of Priſoners by an Under-Sheriff.

4. **Upon** a Point reſerved at *Niſi Prius*, in an Action againſt the Sheriff of *Lancaſhire* for an Eſcape, it was held by the Court, that an Aſſignment of Priſoners by an Under-Sheriff to the ſucceeding High-Sheriff, is good, though it be not by Indenture. *Mich.* 6 *Geo.* 2. *C. B. Poulter* againſt *Greenwood*.

Statutes.

See

Stat. 5 *Geo.* 2. *c.* 27.
Arreſt 4.
County Palatine 2, 3.

6 *Geo.* 2. *c.* 27.
Attorney 3.

8 *Geo.* 2. *c.* 24.
Mutual Debts.

11 *Geo.* 2. *c.* 19.
Actions.
Attornment.
Avowry.
Diſtreſſes.
Replevin 1.
Tenants.

Stat. 12 *Geo.* 2. *c.* 13.
Attornies 1, 2, 4, 14, 15, 17.
Sheriffs 1.
Writs 1.

13 *Geo.* 2. *c.* 18.
Arreſts 4.
Certiorari 1.

14 *Geo.* 2. *c.* 17.
Trials 6, 7, 8, 9, 10.

14 *Geo.* 2. *c.* 20.
Recoveries 3, &c.

15 *Geo.* 2. *c.* 30.
Lunatics.

16 *Geo.* 2. *c.* 27.
Bankrupts 4.

Subpoena.

Where an Infant is Defendant, the *Subpoena ad audiendum Judic'* muſt be ſerved on the Guardian.

1. **Where** an Infant is Defendant, the Affidavit of Service of the *Subpoena* to hear Judgment muſt be, that the Guardian was ſerved, not the Infant; and this (as it ſeems) tho' the Infant be above Fourteen, or want ever ſo little of Twenty-one: And the Serving of the Infant is not good, for *non conſtat* but the Infant might be in his Cradle; or ſhould it appear by the Bill that he is near Twenty-one, yet being not able to defend himſelf, the Service muſt be on the Perſon appointed by the Court to defend him. *Mich.* 1731. *Taylor* verſus *Atwood*, 2 *Williams* (643.)

When on the Death of the Party's Clerk in Court, a *Subpoena ad faciend' Attorn'* ſhall iſſue.

2. **In** this Cauſe a Decree was made for Sale of the Eſtate for the Payment of Debts, and a Purchaſer approved of and confirmed: There was likewiſe an Order that all Parties ſhould join, *&c.* and an Affidavit that one of the Parties refuſed to be ſpoke with, ſo as to be ſerved with the Writ of Execution, tho' it was allowed to be a Motion of Courſe, on Affidavit of this Matter,

that Service of the Clerk in Court might be good Service, yet where the Clerk in Court appears to be dead (as he did in this Caſe) there the Court ſaid they would make no Order, but a *Subpoena ad faciend' Attornat'* muſt be taken out and ſerved; becauſe till then the Party is not in Court. It was alſo allowed that the Service of the *Subpoena ad faciend' Attorn'* would be good, if left at the Houſe; and that though the Party in this Caſe denied himſelf, yet ſtill the *Subpoena* might be left at his Houſe. *Paſch.* 1718. *Ratcliff* v. *Roper*, 1 *Williams* 420.

Service of a Writ of Execution.

Of the *Subpoena ad faciend' Attorn'*.

Suggeſtion. See **Coſts** 4.

Summons.

1. NO Attorney, or other Perſon, ſhall be ſummoned to attend any Juſtice of this Court, nor any Matters be tranſacted before ſuch Juſtice, at his Chambers, or elſewhere out of Court, during the Sitting of the Court at *Weſtminſter*; and all Orders, and other Tranſactions ſo to be made by ſuch Juſtice, ſhall be vacated. *Hil.* 17 *Geo.* 2. *C.B.*

No Summons to attend any Judge at his Chamber during the Sitting of the Court.

2. The Defendant's Attorney took out a Summons for Time to plead, but did not attend upon it; the Plaintiff's Attorney attended an Hour, and afterwards ſigned Judgment. *Curia:* It is irregular, the Summons ſhould have been diſcharged firſt. *Eaſter* 6 *Geo.* 2. *C.B.* *Rivers* againſt *Plumlee*. *Mich.* 11 *Geo.* 2. *C.B.* *Browne* againſt *Godfrey*.

Summons for Time to plead muſt be diſcharged before Judgment can be ſigned.

Supplemental Bill.

WHereas by the antient eſtabliſhed Courſe of this Court, no Bill of Review, grounded upon new Matter diſcovered ſince the making of the Decree thereby complained of, ought to be exhibited without the ſpecial Leave of this Court; and a Depoſit of 50 *l.* being made with the Regiſter of this Court, as a Pledge to anſwer ſuch Coſts and Damages as at the Hearing of the Cauſe on ſuch Bill of Review ſhall be awarded to the adverſe Party, in caſe the Court ſhall think fit to award any; notwithſtanding which, in certain Caſes where a former Decree hath not been ſigned and inrolled, a Petition hath ſometimes been preferred to this Court to rehear the original Cauſe wherein ſuch Decree was made, and a Supplemental or new Bill in the Nature

of

of a Bill of Review, grounded upon new Matter, hath been brought in order to reverſe or vary ſuch former Decree without the Leave of the Court, or any Depoſit made upon exhibiting ſuch Supplemental or new Bill, by Means whereof the ſaid antient Courſe of the Court may be eluded, and great Delays and other Inconveniences may enſue; for remedying and preventing whereof it is ordered, That no Supplemental or new Bill, in Nature of a Bill of Review, grounded upon any new Matter diſcovered, or pretended to be diſcovered ſince the pronouncing of any Decree of this Court, in order to the reverſing or varying of ſuch Decree, ſhall be exhibited without the ſpecial Leave of the Court firſt obtained for that Purpoſe; and unleſs the Party exhibiting the ſame do firſt depoſit with the Regiſter of this Court ſo much Money, as, together with the Depoſit by the Rule of this Court to be made on obtaining a Rehearing of the Cauſe or Cauſes wherein ſuch Decree was pronounced, will make up the Sum of 50 *l.* as a Pledge to anſwer ſuch Coſts and Damages as ſhall be awarded to the adverſe Party, in caſe the Court ſhall think fit to award any at the Hearing of the Cauſe on ſuch Supplemental or new Bill. *Order in Chancery*, 17 *Oct.* 1741.

No Supplemental Bill grounded on new Matter, in order to vary a Decree, to be exhibited without Leave of the Court, and depoſiting, *&c.*

Tenants.

See **Diſtreſs.**

Whereas great Inconveniences have happened to Landlords, whoſe Tenants have Power to determine their Leaſes by giving Notice to quit the Premiſſes by them holden, and yet refuſing to deliver up the Poſſeſſion when the Landlord hath agreed with another Tenant for the ſame; it is enacted, That in caſe any Tenant ſhall give Notice of his Intention to quit the Premiſſes by him holden at a Time mentioned in ſuch Notice, and ſhall not accordingly deliver up the Poſſeſſion thereof at the Time in ſuch Notice contained, the Tenant, his Executors or Adminiſtrators, ſhall from thenceforth pay to the Landlord double the Rent or Sum which he or they ſhould otherwiſe have paid; to be levied, ſued for and recovered, at the ſame Time and in the ſame Manner, as the ſingle Rent or Sum before the giving ſuch Notice could be levied, ſued for or recovered; and ſuch double Rent or Sum ſhall continue to be paid during all the Time ſuch Tenant ſhall continue in Poſſeſſion as aforeſaid. *Stat.* 11 *Geo.* 2. *c.* 19. §. 18.

Tenant giving Notice to quit Poſſeſſion, and not quitting accordingly, to pay double Rent.

Tender.

See **Pleading** 12.

How a Tender made in Term-Time, but before the Action brought, may be taken Advantage of.

1. **BILL** of *Middleſex* ſued out 9 *Feb.* returnable the laſt Return of *Hilary* Term, and Declaration of *Hilary* Term generally: The Defendant had made a Tender before 9 *Feb.* Motion, that the Plaintiff might enter his Declaration with a ſpecial *Memorandum* of the laſt Day of *Hilary* Term, that the Defendant might be able to plead the Tender. Objection, that the *Memorandum* ſhould be of the 9th of *February*; for if the Tender was after the 9th, it was not a good Tender. *Curia*: The *Memorandum* muſt be of the 12th, for till then the Defendant was not in Court; and if the Defendant ſhould plead a Tender *ante exhibitionem billæ*, the Plaintiff may reply that the Tender was after the 9th of *February*, &c. *Paſch.* 5 *Geo.* 2. *B. R.* *Winter* v. *Moreland*. Ordered, that the Plaintiff ſhould inſert the Day of filing the Bill, *viz.* 3 *Feb.* in the *Memorandum* of the Declaration; and that the Defendant ſhould have Liberty to plead a Tender as of laſt Term, the Declaration not being delivered till after the Term. *Eaſter* 12 *Geo.* 2. *C. B.* *Potts* againſt *Creſwell* an Attorney.

When to apply for Leave to plead a Tender.

2. **Motion** for Leave to plead a Tender as of laſt Term, notwithſtanding a general Imparlance. Objection: It ought to be applied for the firſt Day of the Term. *Curia*: 'Tis time enough within the firſt four Days. *Hil.* 12 *Geo.* 2. *C. B.* *King* againſt *Nichols*.

Teſtatum. See **Execution** 3, 4, 5.

Treſpaſs. See **Diſtreſs** 11.

Trials.

See { **Abatement** 2.
Declaration 11.
Notice 1, 2.

Writ and Record of *Ni. Pri.* on the Circuit, to be entred together.

1. **ORdered** by all the Judges of *England*, That in every Cauſe to be tried before them in their reſpective Circuits, the Writs and Records ſhall be entered together; and that no Record ſhall be received without the Writ. *Trin.* 10, 11 *Geo.* 2.

When to be deliver'd to, and entred with the Marſhal.

2. **Ordered** by all the Judges of *England*, That no Writ and Record of *Niſi Prius* ſhall be received at the Aſſizes in any County in *England*, unleſs they ſhall be delivered to, and entred with the Marſhal, before the firſt Sitting of the Court after the Commiſſion-Day, except in the Counties of *York* and *Norfolk*; and there the Writs and Records ſhall be delivered to, and entered with the Marſhal, before the firſt Sitting of the Court on the ſecond Day after the Commiſſion-Day; otherwiſe they ſhall not be received. And that every Cauſe ſhall be tried in the Order in which it is ſo entered, without any Preference or Delay, unleſs it ſhall be made out to the Satisfaction of the Judge in open Court, that it is impracticable or inconvenient ſo to do; who thereupon may make ſuch Order for the Trial of the Cauſe ſo put off, as to him ſhall ſeem juſt.

Cauſes to be tried in Order as they are entred.

Liſts to be made and ſet up.

3. **That** a Liſt of the Cauſes, when ſo entered as aforeſaid, ſhall be made by the Marſhal, and forthwith fixed up in ſome publick Place in the *Niſi Prius* Court, there to remain during the whole Time of the Aſſizes. *Hil.* 14 *Geo.* 2.

Writs and Records of *Ni. Pri.* for Trials in *London* and *Middleſex*, when to be entred.

4. **Notice** fixed up in the public Office, That no Record or Writ of *Niſi Prius* will be received at any Sitting after Term in *Middleſex*, unleſs the ſame ſhall be delivered to and entered with the Marſhal within two Days after the laſt Day of every Term; and that no Record or Writ of *Niſi Prius* will be received at any Sitting after Term in *London*, unleſs the ſame ſhall be delivered to and entered with the Marſhal the Day before the Day to which the Sitting in *London* ſhall be firſt adjourned.

Cauſes to be tried in order as entered.

5. **That** every Cauſe to be tried at *Niſi Prius* in *London* and *Middleſex*, ſhall be tried in the Order in which it is entred, (beginning with the *Remanets*) unleſs it ſhall be made out to the Satisfaction of the Judge of *Niſi Prius* in open Court, that there is reaſonable Cauſe to the contrary; who thereupon will make ſuch Order for the Trial of the Cauſe ſo to be put off, as to him ſhall ſeem juſt. *Mich.* 17 *Geo.* 2. *B. R.*

After Iſſue joined, if Plaintiff neglects to proceed to Trial, Judgment as in Caſes of Nonſuit to be given.

6. **Where** any Iſſue ſhall be joined in any Action or Suit at Law in any of the Courts of Record at *Weſtminſter*, *&c.* and the Plaintiff ſhall neglect to bring ſuch Iſſue on to be tried, according to the Courſe and Practice of the ſaid Courts reſpectively, it ſhall be lawful for the Judges of the Courts reſpectively, at any Time after ſuch Neglect, upon Motion made in open Court (due Notice having been given thereof) to give the like Judgment for the Defendant, as in Caſes of Nonſuit; unleſs the ſaid Judges ſhall, upon juſt Cauſe and reaſonable Terms, allow any further Time or Times for the Trial of ſuch Iſſue; and if the Plaintiff ſhall neglect to try ſuch Iſſue within the

Unleſs, *&c.*

Time

Time or Times ſo allowed, then, and in every ſuch Caſe, the ſaid Judges ſhall proceed to give Judgment as aforeſaid. *Stat.* 14 *Geo.* 2. *c.* 17. §. 1.

Such Judgment to be of ſame Force as Judgment upon Nonſuit.

7. Provided, That all Judgments given by Virtue of this Act, ſhall be of the like Force and Effect as Judgments upon Nonſuit, and of no other Force or Effect. *Same Stat.* §. 2.

Defendant to have his Coſts, if on a Nonſuit in that Action he ſhould be intitled to it.

8. Provided alſo, That the Defendant ſhall upon ſuch Judgment be awarded his Coſts in any Action or Suit where he would upon Nonſuit be intitled to the ſame, and in no other Action or Suit whatſoever. *Same Stat.* §. 3.

Ten Days Notice of Trial, where Defendant lives above forty Miles from *London* or *Weſtminſter.*

9. No Indictment, Information or Cauſe whatſoever, ſhall be tried at *Niſi Prius* before any Judge or Juſtice of Aſſize or *Niſi Prius*, or at the Sittings in *London* or *Weſtminſter*, where the Defendant reſides above forty Miles from the ſaid Cities reſpectively, unleſs Notice of Trial in Writing has been given at leaſt ten Days before ſuch intended Trial. *Same Stat.* §. 4.

And if not ſix Days Countermand,

To pay Coſts.

10. And in Caſe any Party ſhall have given ſuch Notice of Trial as aforeſaid, and ſhall not afterwards duly countermand the ſame in Writing at leaſt ſix Days before ſuch intended Trial, every ſuch Party ſhall be obliged to pay unto the Party to whom ſuch Notice of Trial ſhall have been given as aforeſaid, the like Coſts and Charges as if ſuch Notice of Trial had not been countermanded. *Same Stat.* §. 5.

Of Notice of Trial.

11. In *Michaelmas* Vacation, Notice of Trial was given for the firſt Sitting in *Hilary* Term, which was *Feb.* 1. On that Day a Countermand, with a Continuance of the Notice of Trial, was given for the ſecond Sitting, which was *Feb.* 7. On *Feb.* 5. another Countermand, with a Continuance, was given for the laſt Sitting, which was *Feb.* 10. On *Feb.* 9. another Countermand, with a Continuance, was given for the Sitting after Term; when the Cauſe was tried, and no Defence made: But the Verdict was ſet aſide. *Paſch.* 5 *Geo.* 2. *B. R. Harris* v. *Mears.*

Shall be continued but once.

12. Notice of Trial for the laſt Sitting in *Eaſter* Term was continued till the Sitting after Term, and then continued a ſecond Time to the firſt Sitting within this Term. Verdict for the Plaintiff, without Defence. Motion that the Verdict might be ſet aſide, for that Notice can't be continued twice. *Curia:* Continuance of Notice is ſhort Notice which ſhall be given but once; but here the full Time, *viz.* eight Days, was given, and the Word *continue* ſhall not vitiate the Notice. *Trin.* 6, 7 *Geo.* 2. *C. B. Boyce* againſt *Twiſt.*

In Notice of Trial, the reputed Diſtance, and not the meaſured Diſtance of the Defendant's Abode, is the Rule to go by.

13. **The** Defendant lived at *Walton* near *Aylesbury*, and only eleven Days Notice of Trial was given. There was an Affidavit that *Walton* was forty-two meaſured Miles from *London*: On the other Side, there were Affidavits that it was but thirty-three computed Miles from *London*. The Notice was held to be good, and that the reputed Diſtance was the Rule to go by. *Mich.* 7 *Geo.* 2. *B. R. Baines* v. *Pettifer*.

When fourteen Days Notice of Trial requiſite.

14. **Motion** to ſet aſide a Verdict at *Huntingdon* Aſſizes, for that the Defendant lived above forty Miles from *Huntingdon*, and there were not fourteen Days Notice of Trial. Denied. Chief Juſtice: Fourteen Days Notice of Trial is only requiſite when the Trial is in *London* or *Middleſex*, and the Defendant lives above forty Miles from *London*. *Paſch.* 7 *Geo.* 2. *B. R. Anonymus. Vide ſupra, Stat.* 14 *Geo.* 2.

Of putting off a Trial, for want of a material Witneſs.

15. **Where** a Motion is made to put off a Trial for want of a material Witneſs, the Affidavit muſt ſet out an Expectation of the Witneſs's returning by ſuch a Time; the Defendant himſelf muſt ſwear the Witneſs is material, (abſolutely) and without whoſe Teſtimony he cannot ſafely proceed to Trial, as he is informed and believes. When a Witneſs has a ſettled Reſidence abroad, the Court will not put off the Trial, becauſe there is no Expectation of his coming at all; but if the Witneſs ſhould write hither, and promiſe to come over in a reaſonable Time, the Court might conſider of it. *Mich.* 17 *Geo.* 2. *C. B. Eyre's* Caſe.

None but the Defendant can ſwear that a Witneſs is material.

16. **Motion** to put off a Trial, upon the Affidavit of a third Perſon, That to his Knowledge *A. B.* was a material Witneſs for the Defendant. Denied: None but the Party himſelf can ſwear to any Man's being a material Witneſs. *Mich.* 7 *Geo.* 2. *C. B. Carter* againſt *Uppington*. Denied, on an Affidavit made by the Defendant's Wife, that the Defendant was gone to Sea, and that *A. B.* a material Witneſs, as ſhe believed, was with him. *Eaſter* 7 *Geo.* 2. *C. B. Gray* againſt *Hilton*.

What a ſufficient Affidavit of the Want of a material Witneſs, to put off a Trial.

17. **Motion** to put off a Trial on account of the Abſence of a material Witneſs, but denied; becauſe the Defendant in his Affidavit ſaid, that the Witneſs would not be back till *Auguſt*, but did not ſay he believed he would be back by that Time. *Trin.* 6 *Geo.* 2. *B. R. Elliot* v. *Criſp*.

Trial put off for want of a material Witneſs.

18. **Motion** that the Trial might be put off; the Reaſon was, a material Witneſs was obliged to go to *Briſtol* Fair, and had ſettled and appointed ſeveral People to meet him, as uſual, at that Annual Fair. Rule to ſhew Cauſe, Granted. *Trin.* 10 *Geo.* 2. *C. B. Goſtwick* againſt *Throgmorton*.

Trial put off for two Terms.

19. **Motion,** that the Trial in this Cauſe might be put off till next *Michaelmas* Term, upon an Affidavit that a material Witneſs was gone to Sea, and

not expected in *England* till *Auguſt* next. Rule to ſhew Cauſe, granted. *Eaſter* 8 *Geo.* 2. *C. B.* *Stratford* againſt *Marſhal.*

20. **Notice** of Trial for the *Thurſday*, on the *Wedneſday* Motion, that the Trial might be put off: Denied. *Curia*: Your Application comes too late; you ſhould have come at leaſt two Days before the Day for Trial: The Defendant had eight Days Notice of Trial. *Trin.* 11, 12 *Geo.* 2. *C. B.* *Sellon* againſt *Chamberlain*.

Motion to put off a Trial ſhould be at leaſt two Days before the Day of Trial.

21. **Motion** to put off a Trial, for want of a material Witneſs, denied; 1. Becauſe made the Day before the Trial was to come on. 2. Becauſe it appeared by the Affidavit that the Witneſs went out of Town after Notice of Trial was given. *Trin.* 10 *Geo.* 2. *C. B.* *Bourne* againſt *Church*.

Denied, when Witneſs went out of Town, after Notice of Trial was given.

22. **In** Ejectment the Court will ſtay the Trial till Coſts for not proceeding on a former Notice of Trial are paid, but not in other Actions. *Paſch.* 5 *Geo.* 2. *B. R.* *Cock* v. *Wilkins*. *Hil.* 6 *Geo.* 2. *B. R.* *Huggins* v. *Shirley*. And denied in an Action of Aſſault, though the Plaintiff was gone beyond Sea; ſo that the Defendant could not have the uſual Remedy by way of Attachment. *Mich.* 7 *Geo.* 2. *B. R.* *Chapman* v. *Brown*.

When Trial ſhall be ſtayed, for not paying Coſts.

23. **Motion** for a new Trial. Juſtice *Denton* informed the Court, that Judge *Page*, who tried the Cauſe, ſaid it was a Verdict contrary to Evidence, and againſt his Direction; and that if in any Caſe a new Trial ought to be without Coſts, he thought in this Caſe it was proper. *Curia*: A new Trial cannot be granted without Coſts. *Mich.* 2 *Geo.* 2. *C. B.* *Brockhurſt* againſt *Copſon*.

No new Trial without Coſts.

24. **The** Court was moved to ſet aſide a *Non Proſ.* at the Aſſizes, and for a new Trial; but the Court would not grant it, becauſe by the Plaintiff's becoming nonſuit, he was out of Court. *Mich.* 13 *Geo.* 2. *C. B.* *Talbot* againſt *Pigot*.

Plaintiff being nonſuited at the Aſſizes, new Trial denied.

25. **Ejectment.** Motion for a new Trial, on Payment of Coſts. The Verdict was for the Plaintiff; and it was ſaid on the Behalf of the Plaintiff, that it was never uſual to grant new Trials in Ejectment, becauſe a freſh Ejectment might be brought, and the Cauſe tried over again. *Curia* unanimous: It hath not been uſual to grant new Trials in Ejectment, where the Verdict hath been for the Defendant, becauſe the Plaintiff may bring a freſh Ejectment, and no other Diſadvantage happens to him; but where the Verdict hath been for the Plaintiff, it is otherwiſe, and new Trials have been granted, for there the Conſequence of not granting a new Trial is the Alteration of the Poſſeſſion of the Premiſſes in Queſtion. And as the Chief Juſtice, who tried the Cauſe, was of Opinion the Cauſe ought to be tried over again, a new Trial was granted, on Payment of Coſts. *Mich.* 8 *Geo.* 2. *C. B.* *Letgoe* againſt *Pit*.

Not uſual to grant new Trial in Ejectment, where Verdict for the Defendant; *aliter*, if for the Plaintiff.

Unleſs in extraordinary Caſes.

26. **Ejectment.** Verdict for the Defendant: New Trial granted; it appearing that the Deed, under which the Defendant claimed, was forged, the Dye of the Stamp on the Deed not being cut till ſeveral Years after the Date of the Deed. *Mich.* 8 *Geo.* 2. *C. B. Baker* againſt *Pelcher.*

Motion for a new Trial muſt be made within the firſt four Days of the Term.

27. **Motion** for a new Trial made after the firſt four Days of the Term. *Curia:* The Application comes too late; we have determined that theſe Motions ſhall never be received after the firſt four Days of the Term. *Eaſter* 13 *Geo.* 2. *C. B. Reynolds* againſt *Simonds.*

New Trial granted after Motion in Arreſt of Judgment, becauſe the Jury had caſt Lots for the Verdict.

28. **Motion** for a new Trial, becauſe the Jury being divided caſt Lots, which falling in Favour of the Plaintiff, they gave a Verdict for him. Objection: It has been admitted, by the Motion in Arreſt of Judgment, that the Verdict is good; and therefore the Defendant cannot have Liberty after to move to ſet it aſide. Chief Juſtice: It is generally true, that, after Motion in Arreſt of Judgment, a Matter known to the Party ſhall not be inſiſted on, to have a new Trial; but there is no Inſtance, where, in a Caſe like this, the Verdict was allowed, becauſe there had been a Motion in Arreſt of Judgment. This being a Verdict contrary to *Magna Charta*, to the Duty of a Jury, againſt Reaſon and Right, I think there ought to be a new Trial. 2 *Lev.* 139. The King againſt Lord *Fitzwalter* is in Point. *Denton* and *Comyns*, Juſtices, of the ſame Opinion. *Forteſcue* Juſtice doubted: He ſaid he could not take it to be as no Verdict, ſince the *Poſtea* had returned it as ſuch; but he agreed it ought to be a void Verdict. And it was ſet aſide. *Paſch.* 9 *Geo.* 2. *C. B. Philips* v. *Fowler*, *Comyns* 525. Vide 2 *Lev.* 205. 2 *Jones* 83. *Cro. Eliz.* 779. 3 *Keb.* 811. 1 *Lev.* 95. *Mo.* 631. 2 *Roll. Abr.* 1 *And.* 232.

New Trial granted for Misbehaviour in the Jury, *&c.* before the Trial.

29. **Motion** for a new Trial in Ejectment, on Affidavits, ſhewing, 1. That upon the View granted one of the Shewers for the Plaintiff gave Evidence to ſuch of the Jurors as were upon the View, by arguing againſt the Likelihood that the Places ſhewn on the Part of the Defendants, as the Limits of their Land, ſhould be the Boundaries, becauſe the Names they bore might be given for ſuch and ſuch particular Reaſons. 2. That one of the Jurors declared at the View, that by what they had ſeen (before the Shewer for the Defendant had ſhewn) they ſhould ſoon determine the Diſpute; and that the Day before the Trial he ſaid the Plaintiff was a Neighbour, and right or wrong he would give it for him. And for theſe Reaſons a new Trial was granted: Tho' Baron *Parker* ſeemed to think that the Words being known before the Trial, they were proper for a Challenge; which being omitted, it was not a proper Cauſe for a new Trial. *Hil.* 11 *Geo.* 2. *Scacc.* Sir *George Wynn* againſt *The Biſhop of Bangor*, *Comyns* 601.

30. **The** Jury withdrew to conſider of their Verdict; afterwards they came into Court, attended by an Officer, to ask a Queſtion; which being anſwered, they were ſent back again. In the Afternoon, the Verdict not being given, ſome of them were ſeen in Court, and being asked by the Judge what they did there, they ſaid they could not agree in their Verdict; whereupon they were ſent back to their Companions. A Verdict was given for the Plaintiff. Motion that it might be ſet aſide. *Curia:* This was a Miſbehaviour in the Jury, for which they ought to be fined; but it is not a ſufficient Cauſe to ſet aſide the Verdict. *Mich. 9 Geo. 2. C. B. Lord St. John* againſt *Abbot.*

The Jury ſeparating before Verdict, is not a Cauſe to ſet aſide the Verdict.

31. **Action** for ſlanderous Words ſpoken of a Wine-Merchant, charging him with Selling by falſe Meaſure. Plea, Not guilty. Verdict for the Plaintiff, and only 20 *s.* Damages. Motion for a new Trial, becauſe the Damages were too ſmall. Cited *Woodford* v. *Le Neve*, where a Writ of Inquiry was ſet aſide for the ſame Reaſon. Chief Juſtice: In that Caſe a Writing appeared, which aſcertained the Damages; where Damages are exceſſive, the Court has interfered, and in violent Batteries have increaſed the Damages, which anciently uſed to be only in Maheims; I have often known theſe Motions denied. No Rule. *Mich. 6 Geo. 2. B. R. Hayward* v. *Newton.* A like Motion denied in an Action of *Scandalum Magnatum*, where only 1 *s.* Damages given. *Trin. 13 Geo. 2. C. B. Lord G——* againſt *Heath.*

Verdict not to be ſet aſide for Smallneſs of Damages.

Variance.

1. **Motion** to ſet aſide a Verdict in an Action by Original, for a Variance between the Iſſue delivered and the Record of *Niſi Prius.* By the Iſſue the *Venire* was returnable at a Day certain; in the Record, at a general Return-Day; and in the Iſſue the Words *Duodecim jurator'* were omitted. The Plaintiff inſiſted, that the Award of the *Venire* was no Part of the Iſſue; and that it was ſo determined, *Trin. 3, 4 Geo. 2. C. B. Baſtard* v. *Bartlet.* Motion denied. *Mich. 4 Geo. 2. B. R. Dale* v. *Holmes.*

Variance between the Record of *Ni. Pri.* and the Iſſue deliver'd in the awarding the *Venire*, not material.

2. **Motion** that the Verdict might be ſet aſide, for a Variance between the Iſſue delivered and the Record of *Ni. Pri. viz.* the *Et ſimiliter* was left out in the Iſſue, and inſerted in the Record of *Ni. Pri.* The Defendant had made no Defence. Granted. *Curia:* This is a material Variance, and not amendable. *Trin. 7, 8 Geo. 2. C. B. Rye* againſt *Croſsman.*

Variance between the Iſſue delivered and Record of *Ni. Pri.*

Venire Facias.

See **Amendment** 12, 13. **Variance.**

Venire Facias need not be awarded at length.

1. **Motion** in Arreſt of Judgment, for that the Proceedings being in *Engliſh*, the Award of the *Venire Facias* in the Record of *Niſi Prius* was, that the Sheriff ſhould cauſe to come twelve good, *and ſo forth*; whereas it was inſiſted that the whole ſhould have been at length. *Curia*: The *Venire Facias* is well awarded. *Eaſter* 6 *Geo.* 2. *C. B. Tray* againſt *Smith.*

Venire Facias de novo, where intire Damages, and Part not actionable.

2. **Action** for Words; Verdict for the Plaintiff, and intire Damages. The Plaintiff had laid ſeveral Sets of Words in his Declaration, and, upon a Motion in Arreſt of Judgment, Part of the Words were held to be not actionable, and thereupon Judgment was arreſted: Then the Plaintiff moved that a *Venire Facias de novo* might be awarded upon the Rule of *Michaelmas* 1654. §. 24. *Curia*: Be it ſo, on Payment of Coſts. *Eaſter* 8 *Geo.* 2. *C. B. Smith* againſt *Hayward.*

Twenty-four Jurors returned to the *Venire Facias*, and forty-eight to the *Habeas Corpora*, Verdict ſet aſide.

3. **Motion** that the Verdict might be ſet aſide, with Coſts, becauſe the Sheriffs of the City of *Worceſter* had returned no more than twenty-four Jurors to the *Venire Facias* filed in the *Habeas Corpora* Office, but had returned forty-eight Jurors in the Panel annexed to the *Habeas Corpora*: The Defendant had made no Defence at the Trial. *Curia*: It is contrary to the expreſs Words of the Statute 3 *Geo.* 2. and to the Reaſon of the Statute. Verdict ſet aſide, without Coſts. *Trin.* 11, 12 *Geo.* 2. *C. B. Penrice* againſt *Jackſon.*

Ventre inſpiciendo.

1. **SIR** *John Chaplin*, Bart. at the Age of Nineteen married the Daughter of one *Morris* a Bailiff, and within two Months after the Marriage died, leaving three Siſters his Heirs at Law, in caſe of no Iſſue by this Marriage: And his Widow pretending to be with Child, they petitioned for a Writ *De Ventre inſpiciendo* (1 *Inſt.* 8. *b. Cro. Eliz.* 566. *Moor* 523. *Willoughby*'s Caſe; and *Cro. Jac.* 685. *Theaker*'s Caſe; and the Caſe of *The Attorney General* againſt *La Roche*, determined about ſix Years ſince; *Vide infra*). The Petitioners inſiſted, That whereas the Widow was now at her late Huſband's Seat in *Lincolnſhire*, this might be as her Caſtle, wherein ſhe ſhould be confined and continue until the Time of her Delivery; and that ſome Woman might be always reſident, both before and at the Birth.

On the other Side it was objected, *inter alia*, that the Petitioners ought to have proved that Sir *John* died ſeiſed of ſome Lands in Fee-Simple; whereas it was reported, that by a Family Settlement the Eſtate was intailed. Lord Chancellor: I take this Writ to be of common Right, and is for the Security of the next Heir, to guard him againſt a fraudulent Birth. As to the Objection, that the Petitioners are only intitled to an Eſtate-Tail; this, at the Time the Writ was firſt allowed, being a qualified Fee, is ſufficient: Beſides, any Affidavits proving that Sir *John* was in the Poſſeſſion of Land, will induce me *prima facie* to intend it a Fee-Simple. But as it may be a Hardſhip to oblige the Lady to live in *Lincolnſhire*, far from any of her Friends and Relations; and ſince the Marriage appears to have been but in *March* laſt; conſequently no Probability of her being brought to Bed before *Chriſtmas*; and as her Father conſents that ſhe ſhall be in Town before *Michaelmas*, and reſide in St. *James*'s Pariſh in *Middleſex*, let the Writ *De Ventre inſpiciendo* iſſue at *Michaelmas*, directed to the Sheriff of *Middleſex*. In the mean while the preſent Heirs may ſend two Women at ſeaſonable Times to ſee whether ſhe is with Child, they giving reaſonable Notice before-hand, ſo that this may be attended with as little Inconvenience as poſſible to the young Lady.

Writ *De Ventre inſpiciendo* is of common Right.

Lies for Tenant in Tail.

What the Court will do upon Application for this Writ.

Reg. Brev. 227. *a*.

Note; The firſt Writ is to ſee whether the Widow be with Child, *et quando paritura*; and if the Jury find her with Child, then ſhe is to be removed by a ſecond Writ iſſuing out of *C. B.* (where the firſt is returnable) to a Caſtle, where the Sheriff is to keep her ſafely. *Vide Cro. Jac.* 685, 686. But in the principal Caſe the Lord Chancellor ſaid there was no Occaſion to execute the Writ in that ſtrict Manner, provided People of Skill had from Time to Time free Acceſs to her, and might be preſent at the Birth. *Trin.* 1731. *in Canc. Ex parte Aiſcough.* 2 *Williams* (591.)

2. **One** by Will gave a Sum of Money to be laid out in Land, and ſettled it on *A.* (who was an extravagant Perſon) for Life, Remainder to his firſt, *&c.* Son in Tail Male, Remainder to his Daughters in Tail general, Remainder to a Charity. *A.* married a Woman of ill Reputation, and dying ſoon after, the Wife pretended to be with Child: Whereupon the Maſter of the Rolls, in order to preſerve the Charity from any falſe and ſuppoſititious Child, decreed the Maſter to appoint two Midwives, who ſhould reſort to the Widow, ſearch her, and ſee whether ſhe was with Child or not, and attend at the Birth. Afterwards there being an Attendance on the Maſter, in relation to this Cauſe, the Widow perceiving this Matter would be diſcovered, voluntarily came before the Maſter, and declared that ſhe was not with Child; by which Means the Right to the Money was preſerved to the Charity. *About the Year* 1725. *in Canc. The Attorney General* againſt *La Roche*; cited 2 *Williams* (591.)

The Effect of this Writ decreed on a Bill in Equity.

Venue.

See **County Palatine** 4, 5.

Venue may be changed before Plea, though after Time to plead.

1. A **Defendant** may move to change the Venue at any Time before Plea pleaded, in all ſuch Actions where the Venue may be changed by the Courſe of this Court, notwithſtanding ſuch Defendant may have applied for and obtained further Time to plead, before ſuch Motion made. *Mich.* 16 *Geo.* 2. *C.B.*

Action laid in one County, and the Venue in another, helped by *Stat.* 4, 5 *Ann.*

2. **Declaration** is laid in *Norwich*, but *Norfolk* is in the Margin, and a Writ of Inquiry executed there. *Lutw.* 225, 7. *Rol.* 432. *Per Curiam:* It is helped by *Stat.* 4 & 5 *Ann. c.* 16. *Hil.* 9 *Geo.* 2. *C.B. Howes* v. *Haſlewood, Comyns* 555.

Venue not to be changed on a Promiſſory Note.

3. **The** Venue is not to be changed in an Action upon a Promiſſory Note. *Trin.* 8, 9 *Geo.* 2. *C.B. Ward* againſt *Colclough. Hil.* 10 *Geo.* 2. *C.B. Price* againſt *Vinal. Mich.* 12 *Geo.* 2. *C.B. Watſon* againſt *Willis.*

Venue not to be changed in Debt for Rent.

4. **Debt** for Rent on a Parol Demiſe not laid in the County where the Lands are. Motion to change the Venue. *Curia:* The Venue is never changed in an Action of Debt for Rent. *Mich.* 4 *Geo.* 2. *B.R. Dupleſes* v. *Thorp.*

Venue not to be changed when Attorney is Plaintiff.

5. **Action** of Aſſault and Battery, brought by an Attorney, and laid in *Middleſex.* Motion on the common Affidavit, that the Venue might be changed into *Suffolk.* Denied, He has a Right to lay his Action in *Middleſex. Eaſter* 7 *Geo.* 2. *C.B. Dent* againſt *Lambert.*

If he ſues by Attachment of Privilege.

But if he ſues by *Capias*, and not by Attachment of Privilege, he is to be conſidered as a common Perſon, and the Venue may be changed. *Trin.* 7, 8 *Geo.* 2. *C.B. Welland* againſt *Frument.* The like of a Serjeant at Law, *Mich.* 11 *Geo.* 2. *C.B. Serjeant Girdler* againſt *Mathews.* When Attorney is Defendant, he has no Privilege as to the Venue. *Mich.* 10 *Geo.* 2. *C.B. Mills* againſt *Johnſon.*

A Clerk of Aſſiſe may lay the Venue in *Middleſex.*

——Action of Treſpaſs, Aſſault and Battery, laid in *Middleſex*, upon the common Affidavit: A Rule was made to change the Venue into *Kent, Niſi, &c.* but was afterwards diſcharged, becauſe the Plaintiff was Clerk of the Aſſiſe of the *Norfolk* Circuit, and by Conſequence an Officer of this Court. *Trin.* 5 *Anne B.R. Knight* v. *Barnaby*, 2 *R. Raym.* 1253.

Affidavit to change the Venue, wrong.

6. **A Rule** for changing the Venue from *London* to *Norfolk* was diſcharged, becauſe by the Affidavit it was not ſaid, that the Cauſe of Action, *&c.* but that the

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the Promiſe aroſe there, *&c.* *Mich.* 5 *Geo.* 2. *B. R.* *White* v. *Love.* Like Caſe, *Mich.* 6 *Geo.* 2. *C. B.* *Cole* againſt *Gowring.* *Mich.* 14 *Geo.* 2. *C. B.* *Liſter* againſt *Doiley.* Affidavit, that the Plaintiff's Cauſe of Action, if any, aroſe in the County of *Bucks*, and not in the County of *Middleſex*, or elſewhere out of the County of *Bucks, to the Defendant's Knowledge and Belief*, held to be inſufficient; it ſhould be poſitive. *Mich.* 7 *Geo.* 2. *C. B.* *Belſhaw* againſt *Porter.*

7. **Motion** on the laſt Day of this Term, that the Venue might be changed from *Weſtmoreland* to *Leiceſter.* *Curia:* Such Motions are generally not to be received on the laſt Day of a Term; but in this Caſe the Venue being laid in *Weſtmoreland*, the Cauſe cannot be tried till the Summer Aſſizes: Therefore let the Plaintiff ſhew Cauſe, on the firſt Day of next Term, why the Venue ſhould not be changed. *Hil.* 14 *Geo.* 2. *C. B.* *Cumpſton* againſt *Buckley.*

Motion to change the Venue on the laſt Day of Term received.

8. **Motion** that the Venue might be changed from *York* to *Northumberland.* *Curia:* We never change the Venue, where the Plaintiff may loſe an Aſſize. *Hil.* 14 *Geo.* 2. *C. B.* *Atwood* againſt *Kennedy.*

Venue not to be changed, where the Plaintiff may loſe a Trial.

9. **Motion** to change the Venue from the County of *Middleſex* to the County of the City of *York*; but the Court ſaid they would not change the Venue from a County at large, to a City, or Town and County: And the Chief Juſtice ſaid, that the Court of Exchequer had this Term refuſed to change the Venue from a County to the Town and County of *Southampton.* *Hil.* 5 *Geo.* 2. *C. B.* *Earby* againſt *Windus.*

Venue not to be changed from a County at large, to a City, or Town and County.

10. **Motion** to change the Venue from *Hampſhire* into *Dorſetſhire*, upon Affidavit that the Cauſe of Action (if any) aroſe in *Pool* (which is a Town and County of itſelf, and in *Dorſetſhire*). Denied. *Trin.* 6 *Geo.* 2. *B. R.* *Damon* v. *Jolliffe.*

Venue into a Town and County.

11. **Motion** to change the Venue into *Cheſter*; and it was granted. *Per Curiam:* Becauſe this Court can ſend down the Record by *Mittimus.* *Trin.* 12 *Geo.* 1. *B. R.* *Godfrey* v. *Philpot.* 2 *R. Raym.* 1448.

Venue changed into *Cheſter.*

12. **Motion** to change the Venue from the City of *Norwich* to the City of *London.* The Queſtion was, whether the Venue might be changed from one City and County to another City and County? The Court ſaid the Venue had been often changed into *London*; and the Chief Juſtice ſaid, that Lord *Raymond* had told him they did ſo in the King's Bench. *Trin.* 5, 6 *Geo.* 2. *C. B.* *Gallant* againſt *Squire.*

Venue changed from *Norwich* to *London.*

13. **Motion** that the Venue might be changed from *London* to *Middleſex.* Rule to ſhew Cauſe. Granted. *Hil.* 13 *Geo.* 2. *C. B.* *Stoneham* againſt *Denton.* *Hil.* 3 *Geo.* 2. *C. B.* *Gibſon* againſt *Lechmere.*

Venue changed from *London* to *Middleſex.*

14. Treſpaſs

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Treſpaſs againſt three Defendants: Venue changed on the Motion of two Defendants only.

14. **Treſpaſs** againſt three Defendants; two of the Defendants had appeared by Attorney, and the Plaintiff appeared for the third Defendant. Motion on the common Affidavit for the two Defendants, who had appeared, that the Venue might be changed. The Queſtion was, whether, as two Defendants only moved, and the other did not, the Venue could be changed, for Judgment might be ſigned againſt the third Defendant, and then the Venue would be fixed. Granted. *Curia:* This ſeems to be a new Caſe; it is but reaſonable that the Venue ſhould be changed, if the Plaintiff cannot deny the Affidavit; the Defendant, who does not apply to have the Venue changed, may have been made a Defendant merely to fix the Venue in a wrong County. *Trin.* 10 *Geo.* 2. *C. B. Box* againſt *Reed.*

Verdict.

See **Jury** 1. **Trial.**

Two Iſſues, one only found; Verdict not ſet aſide.

1. **Treſpaſs** for cutting down and carrying away twenty Trees. Plea: As to twelve, the Defendant juſtified for Eſtovers; as to the remaining eight, he pleaded Not guilty. On the Trial, the Plaintiff gave no Evidence as to the eight Trees; the Jury gave a Verdict generally for the Plaintiff, and 5 *s.* Damages, but forgot to find the Defendant Not guilty as to the eight Trees. Motion to ſet the Verdict aſide. Denied. *Hil.* 7 *Geo.* 2. *C. B. Southby* againſt *Day.*

Verdict for Plaintiff on two Iſſues, one againſt Evidence, can't be ſevered.

2. **Two** Iſſues, and both found for the Plaintiff. The Judge certified that the Verdict, as to one of the Iſſues, was againſt Evidence, and right as to the other. Motion that the Verdict might be ſet aſide. *Curia:* The Verdict cannot be ſevered, and therefore muſt ſtand. *Mich.* 7 *Geo.* 2. *C. B. Huddleſtone* againſt *Brigſtock.*

Verdict given by Ballotting ſet aſide.

3. **It** appearing by an Affidavit of two of the Jurymen, that the Verdict was given by Ballotting, the Verdict was ſet aſide. *Eaſter* 9 *Geo.* 2. *C. B. Philips* againſt *Fowler.* Vide *Comyns* 525. *Salk.* 647.

No Motion to ſet aſide a Verdict, after the firſt four Days in Term.

4. **Motion** on the 28th of *October* to ſet aſide a Verdict. Objected, that this Motion comes too late, and ſhould have been made within the firſt four Days in Term. *Curia:* For the future no Motion ſhall be received in Arreſt of Judgment, or to ſet aſide a Verdict after the firſt four Days. *Mich.* 11 *Geo.* 2. *C. B. Willis* againſt *Bennet.*

Witneſſes.

See Trials 15, 16, 17, 18, 21.

1. **THE** Regiſter of an Eccleſiaſtical Court was ſerved with a *Subpoena ad teſtificandum*, and alſo with a Notice to bring a Will with him: He attended at the Trial, but did not bring the Will. Motion for an Attachment, denied. *Curia*: There was no Rule upon him to produce the Will. *Eaſter* 7 *Geo.* 2. *C. B.* *Gage* againſt *Gough*.

Whether a Witneſs ſhall be obliged to bring a Deed without a Rule.

2. **An** Attachment was granted againſt *Ralph Baily*, for not attending at *Wincheſter* Aſſizes to give Evidence, being ſubpœned, and having received one Guinea for his Charges, and being promiſed one Guinea *per Diem* while there, and his Charges; tho' two Caſes were cited to the contrary: For the Court thought the Diſobedience to the *Subpoena* was a good Foundation for an Attachment; and though an Action might be brought on the Statute, yet that was a more dilatory Method, and more difficult to proceed in, which encouraged Witneſſes in not attending, *&c.* *Trin.* 2 *Geo.* 2. *B. R.* *Wyat* v. *Winkford*. 2 *R. Raym.* 1528.

An Attachment againſt a Witneſs, for not attending, being ſubpoened.

3. **Motion** for an Attachment againſt a Witneſs, for not attending at a Trial, though ſerved with a *Subpoena*. Denied. *Curia*: The Plaintiff may bring his Action on the Statute 5 *Eliz. c.* 9. §. 12. *Trin.* 13 *Geo.* 2. *C. B.* *Huſſe* againſt *Fowke*.

Denied.

4. **Caſe** againſt the Sheriff of *Oxford* for a falſe Return of *Non eſt inventus* to a *Capias ad Satiſfaciendum*. It appeared upon Trial that the Sheriff's Bailiffs had frequent Opportunities of taking the Party. *Raymond*, Chief Juſtice, refuſed to admit the Sheriff's Bailiff to be a Witneſs to prove that he had often endeavoured to arreſt the Party, but could not: And on Motion for a new Trial, it was held by the Court that the Bailiff was no legal Witneſs, becauſe he is intereſted in the Cauſe, having given Security for his due executing Proceſs, and by Conſequence could not be a Witneſs in his own Cauſe. *Mich.* 12 *Geo.* 1. *B. R.* *Powel* v. *Hord*, 2 *R. Raym.* 1411.

Bailiff cannot be a Witneſs for the Sheriff on an Action for a falſe Return.

5. *A.* **By** his Will had deviſed his Land to his Mother in Fee; and the Mother was afterwards told by *J. S.* that this Will would not be good, but ought to be *guarded* (as he called it); and that he would make another Will for the Teſtator, which he would take care ſhould be *ſufficiently guarded*. Accordingly *J. S.* drew the Will; which was ſo drawn, that

A Witneſs is examined, who at that Time is diſintereſted, but afterwards becomes intereſted, and Plaintiff in the Cauſe; his Depoſitions allowed to be read.

A. thereby gave the Land to his Mother for Life only, Remainder to *J. S.* in Fee. The Mother on the Death of *A.* brought a Bill to eſtabliſh the firſt Will, and examined the now Plaintiff as a Witneſs to prove the ill Practices made Uſe of by *J. S.* in obtaining the ſecond Will: After which, and before the Hearing of the Cauſe, the Mother died, having made her Will, and given a Rent-Charge, with a Clauſe of Diſtreſs, out of the Eſtate to the Plaintiff, and deviſed the Lands ſo charged to others. Upon offering the Depoſitions of the Plaintiff to be read, it was objected, that the Plaintiff's own Depoſitions could not be read, for as much as he was a Party claiming under the Will in Controverſy, and ſo could not be a Witneſs for the Will. And Sir *Joſeph Jekyll* cited *Tilly's* Caſe, where one was examined as a Witneſs, who at that Time was no ways concerned in Point of Intereſt, but afterwards became intereſted; and at a Trial at Bar in this Caſe, the Judges of *C. B.* ſent a Judge to the Court of *B. R.* for their Opinion in the Point; who held, that the Depoſitions could not be read, for that the Witneſs himſelf was living, and he himſelf could not have been a Witneſs at that Time *viva voce*, becauſe he was then intereſted. But Lord Chancellor, in the principal Caſe, becauſe the Witneſs was a good Witneſs, and diſintereſted at the Time of the Depoſition taken, and this being in the Nature of a Bill of Revivor, to have the Benefit of the Proceedings in which the Plaintiff was examined, admitted the Plaintiff's own Depoſitions to be read. Upon this Occaſion Serjeant *Hooper*, *obiter*, put the following Caſe, as having happened in his Experience, *viz.* *J. S.* was the ſurviving ſubſcribing Witneſs to a Bond, and afterwards the Obligee in the Bond made *J. S.* the ſurviving Witneſs, his Executor: In an Action brought by *J. S.* the Executor, upon this Bond, the Court allowed Evidence to prove the Plaintiff's Hand to the Bond, he being diſabled himſelf to give Evidence, as much as if he was dead. Alſo in the principal Caſe it was declared, that a Grantee, when he appears to be a bare Truſtee, is a good Evidence to prove the Execution of the Deed to himſelf. *Mich.* 1715. *Goſs* v. *Tracey*, 1 *Williams* 287. 2 *Vern.* 699.

Salk. 286.

2 *Vern.* 472.

Writs.

See **Scire Facias** 2. **Writ of Inquiry** 9.

The not ſubſcribing the Attorney's, &c. Name on any Warrant, ſhall not vitiate the ſame.

1. THE not Subſcribing or Indorſing the Name of the Attorney, Clerk in Court, or Solicitor, on any Warrant that ſhall be made upon any Writ, Proceſs or Execution, ſhall not vitiate the ſame; but ſuch Writ, Proceſs and Execution, and all Proceedings thereon, ſhall be as valid and effectual, notwithſtanding any ſuch Omiſſion, as if the Statute 2 *Geo.* 2. *c.* 23. for

Regulating Attornies and Solicitors, had not been made: Provided the Writ whereon ſuch Warrant is made out, be regularly ſubſcribed or indorſed according to the ſaid Act. *Stat.* 12 *Geo.* 2. *c.* 13. §. 4.

Provided.

2. **Motion** to ſtay Proceedings, becauſe the Plaintiff, an Attorney, had not wrote his Name to the Attachment of Privilege. Denied. *Trin.* 5, 6 *Geo.* 2. *C.B. Fawkes, an Attorney,* againſt *Jay.* Like Caſes, *Trin.* 5 *Geo.* 2. *C.B. Warner* againſt *Revel. Trin.* 7, 8 *Geo.* 2. *C.B. Blackhall* againſt *Gould.* Motion to ſtay Proceedings, becauſe no Attorney's Name to the Warrant. Denied. *Hil.* 12 *Geo.* 2. *C.B. Lagget* againſt *Watkins.*

3. **Motion** that Proceedings might be ſtayed, the Attorney's Name not being to the Warrant made by the Sheriff, though it was to the Writ on which the Warrant was made. *Curia:* (*Forteſcue A.* abſent) As the Attorney's Name is to the Writ, it is ſufficient; but till the Statute 12 *Geo.* 2. the not inſerting the Name of Attorney in a Warrant was bad. Some former Determinations on this Head, not declaring the Proceſs void, ſeem wrong. *Eaſter* 14 *Geo.* 2. *C.B. Grice* againſt *Allen.*

Attorney's Name to the Writ, tho' not to the Warrant, ſufficient.

4. **A** *Capias ad reſpondendum*, teſted out of Term, was quaſhed. *Eaſter* 7 *Geo.* 2. *C.B. Bennet* againſt *Sampſon.*

Writ teſted out of Term quaſhed.

5. **An** Attachment for a Contempt, returnable after the Eſſoin-Day, and the Day before the firſt Day of full Term, was quaſhed. *Eaſter* 9 *Geo.* 2. *C.B. The King* againſt *Harris.* Vide *Comyns* 547. S. C.

Returnable the Day before the firſt Day of full Term quaſhed.

6. **Motion** that a Writ of *Capias ad reſpondendum* might be quaſhed, becauſe there were not fifteen Days between the Teſte and Return of the Writ, denied. *Curia:* This is Error, and not Irregularity. *Trin.* 10 *Geo.* 2. *C.B. Williams* againſt *Faulkener.* An Attachment of Privilege was quaſhed, becauſe it had not fifteen Days between the Teſte and Return. *Trin.* 11, 12 *Geo.* 2. *C.B. Hayward, an Attorney,* againſt *Deniſon.*

The Want of fifteen Days between the Teſte and Return of the *Capias*, is Error, and not Irregularity.

7. **Motion** that an Execution might be ſet aſide, it being returnable on a general Return, whereas it ſhould have been returnable on a Day certain. *Curia:* This being an Execution, no Advantage can be taken of it upon a Writ of Error, and is plainly diſtinguiſhable from *Elmes* and *Thomlinſon's* Caſe, which was upon a Writ of Inquiry. Therefore let a *Superſedeas* iſſue, and by Conſent, on the Plaintiff's paying Coſts, the Defendant ſhall bring no Action. *Mich.* 14 *Geo.* 2. *C.B. Walker* againſt *Harris, an Attorney.*

Execution returnable on a general Return, inſtead of a Day certain.

8. **Debt** on a Bail-Bond, ſetting forth, That the 18th of *July* 2 *Geo.* 2. the Plaintiff proſecuted out of the Court of King's Bench (the ſame Court being then held at *Weſtminſter* in the County of *Middleſex*) a Writ of, *&c.* Demurrer. Exception. It appears the Writ was ſued out in the long

Writ not to be averred to be ſued out in Vacation.

Vacation.

Vacation. *July* 18. was after *Trinity* Term: The Court muſt judicially take Notice of the Beginning and End of the Terms, as well Moveable as Immoveable: Therefore the Writ was a void Writ. *Curia:* It is ill, and not according to the Truth of the Fact; for it could not the 18th of *July* be ſued out of the Court of King's Bench then ſitting at *Weſtminſter*, when the Court did not, nor could not ſit out of Term. The Plaintiff had Leave to diſcontinue. *Eaſter* 2 *Geo.* 2. *B. R. Uſher* v. *Crooke*, 2 *R. Raym.* 1557.

Writ of Inquiry.

See { Coſts 1.
Declaration 11.
Dower 1.

Coſts for not executing a Writ of Inquiry according to Notice.

1. Where Notice is given of the Execution of a Writ of Inquiry, and not countermanded in Time, the Defendant ſhall be intitled to Coſts from the Plaintiff, for not executing ſuch Writ of Inquiry in the ſame Manner, as a Defendant by the Courſe of the Court is now intitled to Coſts from a Plaintiff, who does not proceed to the Trial of an Iſſue joined after Notice given. *Trin.* 13 *Geo.* 2. *C. B.*

When a Term's Notice muſt be given.

2. In all Caſes in which there have been no Proceedings for four Terms, excluſive of the Term in which the laſt Proceeding was had, the Party who deſires to proceed again, ſhall give a Term's Notice to the other of ſuch Proceeding; and ſuch Notice ſhall be given before the Eſſoin-Day of the fifth or other ſubſequent Term. A Judge's Summons, if no Order be made thereupon, ſhall not be deemed a Proceeding; but a Notice of Trial, though afterwards countermanded, ſhall be deemed a Proceeding within this Rule. *Eaſter* 13 *Geo.* 2. *C. B.* *Q.* If a Notice of Inquiry will not?

Eight Days Notice of an Inquiry in Town ſufficient, if the Defendant be an Attorney, though he lives above forty Miles from *London*.

3. Action againſt an Attorney who lived above a hundred Miles from *London*, eight Days Notice of executing a Writ of Inquiry in Town. Motion to enlarge it, denied. *Curia:* An Attorney is ſuppoſed to attend in Court. *Mich.* 4 *Geo.* 2. *B. R.* *Anonymus*.

Notice of Inquiry to be confined to two Hours.

4. A Queſtion aroſe (*inter alia*) where Notice of executing a Writ of Inquiry between the Hours of Eleven and Two was good Notice. *Curia:* We have held it, that the Notice muſt be confined within the Compaſs of two Hours at moſt, and therefore this Notice is irregular. *Trin.* 7, 8 *Geo.* 2. *C. B.* *Robinſon* againſt *Philips*.

Notice of Inquiry incertain as to Time and Place.

5. **Motion** to ſet aſide a Writ of Inquiry for Incertainty in the Notice, both as to Time and Place. 1. The Notice was, that the Inquiry would be executed between the Hours of Ten and Two; whereas it ſhould have been confined to two Hours at moſt. 2. The Notice was, that the Writ would be executed at the Sheriff's Office in *Northampton*; it ſhould have been, at ſuch a Place in *Northampton*. The Court held the Notice inſufficient in both Points, and ſet aſide the Writ of Inquiry. *Hil.* 8 *Geo.* 2. *C. B. Squire* againſt *Almond*.

Writ of Inquiry ſet aſide for want of Certainty in the Notice as to the Place.

6. **A** Writ of Inquiry, and Execution on it, were ſet aſide for want of proper Notice of executing the Writ of Inquiry, the Notice being, that it would be executed at the *Three Tuns* in *Brookſtreet* in *Middleſex*, the Defendant making Affidavit that there were three *Brookſtreets* in *Middleſex*; though, on the other Side, an Affidavit was made that there was no Sign of the *Three Tuns* in any of thoſe *Brookſtreets*, beſides in *Brookſtreet Holborn*, and that Writs of Inquiry were uſually executed there: For the Notice ought to aſcertain the Time and Place, ſo that the Party might know certainly when and where to reſort with his Witneſſes. *Trin.* 9, 10 *Geo.* 2. *C. B. Le Marque* v. *Newman*, *Comyns* 551.

Of Notice of executing a Writ of Inquiry before a Judge, at the Sittings after Term.

7. **Notice** was given of executing a Writ of Inquiry before the Sheriff, on *Feb.* 17. After this the Plaintiff obtained a Rule *Niſi*, for executing the Writ of Inquiry before the Chief Juſtice at the Sittings after Term: This Rule was not ſerved upon the Defendant till Two o'Clock of the laſt Day of Term, and was made abſolute at the Riſing of the Court without Oppoſition. On *Tueſday*, *Feb.* 15. the Plaintiff gave Notice that the Writ would be executed before the Chief Juſtice on the *Tueſday* following; which was accordingly done. Motion to ſet it aſide: 1. Becauſe the Rule was ſerved too late to ſhew Cauſe: 2. Becauſe the eight Days Notice of executing the Writ were not excluſive. *Curia:* 1. The Rule was regularly made abſolute; it does not appear that any probable Cauſe could have been ſhewn to the contrary. 2. No Day is ever fixed in the Notice for executing a Writ of Inquiry at the Sittings; the Notice is general, that it will be executed at the Sittings; the Day is left to the Judge's Diſcretion: Neither is the Hour of the Day ever mentioned in ſuch Notice. As the Writ was executed after the Day for which the firſt Notice was given, the Defendant could have no Prejudice, and therefore two Days Notice would have been ſufficient. *Paſch.* 5 *Geo.* 2. *B. R. Perry* v. *Corteſoes*.

Notice of Inquiry can be continued but once.

8. **Notice** of executing a Writ of Inquiry was continued twice. *Curia:* It can be continued but once. It muſt be ſerved two Days before the Day Notice was given for. *Mich.* 8 *Geo.* 2. *C. B. Price* againſt *Bambridge*.

Writ of Inquiry returnable upon a general Return, when it ſhould be on a Day certain, not Error.

9. Writ of Inquiry returnable on a General Return, inſtead of a Day certain, amended. *Mich.* 5 *Geo.* 2. *C.B. Kirby* againſt *Elliſon.* Denied, *per Curiam:* It is Error, and not Irregularity. *Mich.* 8 *Geo.* 2. *C.B. Elms* againſt *Thomlinſon* an Attorney. Error upon a Judgment in *C.B.* by Bill againſt Attorney: The Error aſſigned was, that the Writ of Inquiry was awarded, returnable upon a General Return, *viz. in craſtino Aſcenſionis Domini*, whereas it ſhould have been returnable on a Day certain. But the Judgment was affirmed. *Hil.* 6 *Geo.* 2. *B.R. Smith* v. *Laughton.* Cited *Leper* v. *Hobs*, *Paſch.* 3 *Geo.* 2. 1 *Inſt.* 325. *Paſch.* 6 *Geo.* 2. *B.R. Doily* v. *Burrow.* A like Judgment affirmed, tho' the ſame Matter was aſſigned for Error.

Notice of executing a Writ of Inquiry may be given upon the Iſſue of *Nul tiel Record'.*

10. Determined by the Court, that upon an Iſſue of *Nul tiel Record'*, Notice of executing a Writ of Inquiry may be given up in the Iſſue-Book, as well as upon a Joinder in Demurrer. *Hil.* 8 *Geo.* 2. *C.B. Long* againſt *Lingwood.*

Inquiry awarded after *Venire tam ad triand' quam ad inquirend'.*

11. In Covenant, a Writ of *Venire Facias tam ad triand' quam ad inquirend'* was awarded. Verdict for the Plaintiff: But, by Miſtake, Damages were not aſſeſſed on the Matter, for which Judgment by Default was given. Whereupon a Writ of Inquiry was awarded. *Mich.* 7 *Geo.* 2. *C.B. Townſend* againſt *Pool.*

Leave to execute a new Writ of Inquiry, after Error brought.

12. The Plaintiff moved for Leave to execute a new Writ of Inquiry: A Writ of Inquiry had iſſued, returnable *tres Trin'*, and was executed on the *Monday.* The Defendant had brought a Writ of Error, but had not got it allowed. *Curia:* Let the Plaintiff be at Liberty to execute a new Writ, on Payment of Coſts. *Hil.* 6 *Geo.* 2. *C.B. Stanton* againſt *Winch.*

A ſecond Writ of Inquiry cannot iſſue whilſt another is depending.

13. On a Writ of Inquiry the Jury gave no Damages, whereupon the Plaintiff ſued out another Writ of Inquiry, and upon that a Half-penny Damages were given. *Curia:* This Writ is irregularly iſſued, the firſt being depending, and not returned. Let it be quaſhed. *Trin.* 13 *Geo.* 2. *C.B. Bunting* againſt *Teaſdale.*

Inquiry not to be ſet aſide for Smallneſs of Damages.

14. Motion to quaſh a Writ of Inquiry for Smallneſs of Damages, denied: *Aliter,* if no Damages at all had been given. *Mich.* 10 *Geo.* 2. *C.B. Burgeſs* againſt *Nightingale.* In *Mich.* 6 *Geo.* 2. *B.R. Hayward* v. *Newton*, a Caſe was cited, *Woodford* v. *Le Neve*, where a Writ of Inquiry was ſet aſide for Smallneſs of Damages: But the Chief Juſtice ſaid, the Reaſon of that was, a Writing appeared, which aſcertained what Damages ought to have been given.

The End of the SUPPLEMENT *to* Vol. II.